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

INTERIM ORDER MO-1520-I

Appeal MA-010064-1

Town of Caledon

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NATURE OF THE APPEAL:

This is an appeal from a decision of the Corporation of the Town of Caledon (the Town), under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*).

As background, the Town and the Regional Municipality of Peel (the Region) have been jointly engaged in a resource study surrounding an amendment to the Town's Official Plan. The amendment is to be the subject of a hearing before the Ontario Municipal Board (OMB), originally scheduled to commence in September of 2001, but currently postponed.

The requester (now the appellant) made a request on October 17, 2000 for copies of all records (including notes, letters, memoranda, reports, council minutes and resolutions, studies, etc.) with respect to:

- the Caledon Community Resources Study;
- the development, consideration and approval of Caledon Official Plan amendment 161; and
- the aggregate policies of Caledon's Official Plan.

The appellant is a lawyer who acts as counsel to the Association of Aggregate Producers of Ontario (the APAO) in the OMB proceeding.

In its initial response to the request, dated November 16, 2000, the Town stated that the time limit for answering the request has been extended for an additional thirty-eight days, to December 31, 2000. The Town stated, among other things, that "the reason for the time extension is due to the volume of records being sought and the fact that reviewing such a large number of documents would unreasonably interfere with the operations of the municipality." The appellant was advised that he could ask the Information and Privacy Commissioner to review the decision to extend the time limit for responding to the request.

In a letter dated December 21, 2000, the Town stated that the time limit for responding to the request was further extended to January 31, 2001. Again, the Town stated that the time limit was extended "because of the large number of records that you have requested. Given the number of records involved, responding to your request by December 31, 2000 would unreasonably interfere with the operations of the municipality." The appellant was again advised that the extension could be appealed.

On January 31, 2001, the Town wrote to the appellant indicating that it was responding to the request. The Town stated:

> Unfortunately, we must deny access to some records pursuant to Section 7: advice or recommendations of an officer or employee, Section 10: third party information, Section 11: economic interest and Section 12: solicitor/client privilege.
>
> The documents to which access is being made available may be viewed at our offices at the Town of Caledon Administration Centre, 6311 Old Church Road, Caledon East. Please contact our office to make an appointment to view these

> documents. I think that it may take up to two days to review all of the documents, and allow time for providing copies to be made if you consider it necessary.
>
> As you are aware, there is a fee provided for in the Act for research and preparation of documents. Attached is a detailed list of time spent and tasks performed at the rate of $7.50 per 15 minutes. The total number of applicable hours is 47. An invoice for this amount is enclosed.

In an attachment, the Town detailed the time spent responding to the request in "preparation and research" on 13 separate days between November 15, 2000 and December 6, 2000. The total amount of fees set out for that time is $1, 508.70.

On February 6, 2001, the appellant wrote to the Town, stating:

> I am in receipt of your letter dated January 31, 2002. Under the legislation you are required to individually specify the records which you are denying access to and the specific reasons therefore.
>
> I am also in receipt of the "invoice" for an amount which seems extremely excessive. You will understand that pursuant to section 45(3) of the legislation you are required to provide me with an estimate of the expected costs. I requested such an estimate from you verbally last November. I presume that I should treat this "invoice" as the estimate.

In the appeal letter, dated February 23, 2001, the appellant states that the appeal covers the following issues: the Town's denial of access to certain records; the Town's assessment of cost for preparation of documents and research; and the Town's failure to respond to the request in a timely manner. The appellant also states that the Town "has not conformed to its requirements to provide a list of records it is denying access to and consequently at this point my appeal cannot be more specific. Once we have received the information the Town is required to provide in respect of which documents it is denying access to, and under what basis, I can provide more detailed grounds for appeal."

After mediation efforts through this office, this appeal was referred to adjudication. The Report of Mediator sets out some of the positions of the parties with respect to the issues in this appeal. Included in the Report is the observation that "just prior to referring this appeal for adjudication, the Town has taken the position that it has not yet issued a substantive decision regarding the Appellant's request." This observation arises out of correspondence sent from the Town to the appellant on October 10, 2001. This letter, states, in part:

> Further to Mr. David Ostler's correspondence to you of January 31, 2001, which included a fees estimate, enclosed please find a subsequent fees estimate.

> The fees estimate includes the costs that would be required for the hours of manual searching to locate all of the records and the costs of preparing the record for disclosure, including severing a part of the record. We have sought the advice of an employee with the Town of Caledon who is familiar with the type and contents of the requested records in order to determine, with some accuracy, the amount of this fees estimate. The Town of Caledon has made no final decisions as to which documents you will be granted access; any final decision on access is, at this point, premature and can only properly be made once all of the records are retrieved and reviewed. Therefore, the following is an estimate only and is in addition to the earlier fee request made of you (in the January 31, 2001 correspondence) for $1,508.70.

In chart form, the Town sets out the further fees it intends to charge in relation to the request, totalling $6,610.00. Of this amount, $1,200.00 is claimed in respect of "manual search charges" (which is later clarified in the Town's representations to represent "preparation charges" for severing records), $2,200.00 in respect to "photocopying charges", and $3,150.00 in respect of "preparation charges" which are said to include compiling a list, formatting, typing, proof-reading and severing information. The Town then requests a payment of "50 percent of the fee estimate… before it performs any further work related to this…request."

The appellant has requested that his appeal be amended to include "these additional charges, which are excessive and unreasonable, were not preceded by an estimate and which purport to be levied many months after the Notice of Appeal was issued."

As noted in the Report of Mediator, the issues in dispute between the parties are the application of sections 7, 10, 11 and 12 to the records, and various issues relating to the fees and the Town's decision in this matter. In this appeal, I decided to ask for representations on certain of these issues initially, with a view to making some interim determinations. In particular, I asked for representations from the Town on the reasonableness of its fees estimates, and from both parties on the issue of whether the Town's decision should be treated as an interim or a final decision. I then provided the appellant with the Town's submissions and provided him with the opportunity to respond to them on the issue of fees.

DISCUSSION:

IS THE TOWN'S DECISION A FINAL DECISION OR AN INTERIM DECISION?

I find that the Town's decision of January 31, 2001 should be treated as a final decision which is not in compliance with the requirements of the *Act*, specifically, section 22(1) (contents of notice of refusal).

The concept of an "interim" access decision to accompany a fee estimate was first discussed in Order 81, in the context of the provincial *Act*. In that order, former Commissioner Sidney B. Linden established that an interim access decision may be issued to accompany a fee estimate "…where the institution is experiencing a problem because a record is unduly expensive to

produce for inspection by the head in making a decision." Order 81 goes on to indicate that the undue expense may be caused by "…the size of the record, the number of records of the physical location of the record within the institution". It also sets out guidelines for the contents of interim access decisions and the preparation of fee estimates. Because no final decision on access has been made, there can be no appeal on the grounds of denial of access as a result of an interim access decision; however, a requester can appeal the fee estimate at this stage. Although when Order 81 was issued, the municipal *Act* was not yet in effect, its approach has been subsequently adopted in the municipal context (see Order M-555).

It is clear from Order 81 that it is intended that an interim access decision and fee estimate be based on a preliminary familiarization with the records, rather than an exhaustive review:

> How can a head be satisfied that the fees estimate is reasonable without actually inspecting all of the requested records? Familiarity with the scope of the request can be achieved in either of two ways: (1) the head can seek the advice of an employee of the institution who is familiar with the type and contents of the requested records; or (2) the head can base the estimate on a representative (as opposed to a random) sample of the records. Admittedly, the institution will have to bear the costs incurred in obtaining the necessary familiarity with the records, however, this is consistent with other provisions of the *Act*. For example, subsection 57(1)(a) [of the provincial *Act*] stipulates that the first two hours of manual search time required to locate a record must be absorbed by the institution and cannot be passed on to the requester.

Section 57(1)(a) referred to above and its municipal equivalent no longer exist. However, the reference to this provision in Order 81 is an indication of the amount of time that it was anticipated might be required to provide a fee estimate and interim access decision.

The mechanism of interim access decisions accompanied by fee estimates as outlined in Order 81 recognizes the interests of both requesters and institutions in dealing with certain types of complex requests. For requesters, it provides an opportunity to consider whether or not to pursue an access request after receiving information about the magnitude of the fees which will be charged, and the likelihood of access being granted. For institutions, it provides an opportunity to stage a response to a complex request.

As I have indicated, however, Order 81 anticipates that an interim access decision and fee estimate be provided after only a modest amount of work on the part of institutions. Consistent with this, Order 81 also anticipates that a fee estimate and interim access decision be made within the initial 30 day time limit set out in section 19 of the *Act* (see, also, Order M-555).

In the case before me, the Town submits that its decision of January 31, 2000 is an interim decision. It states that this appeal ought to proceed on the issue of fees only, as a final access decision has yet to be made. The Town submits that the request was:

> so all-encompassing that it made it unduly expensive for the Town of Caledon to produce the records for inspection. This undue expense was caused by the large number of documents (which are estimated at more than 800 documents and over 11,000 pages) which had to be located in various staff members' files at the Town of Caledon.
>
> As a result of difficulties locating the documents as well as employing a Freedom of Information Officer and finding other available employees at the Town of Caledon to review the documents, the Town of Caledon sought two extensions of the time limit. Once the Town of Caledon had an employee who was available, involved and also familiar with the type and contents of the requested documents, it became apparent that proceeding with the request was going to be unduly expensive. Consequently, an interim access decision letter was issued by [a named employee]. This interim decision letter was addressed to [the appellant] and dated January 31, 2001. A copy of this letter is enclosed for your reference.
>
> IPC Order P-81 points out that if the institution determines, even on an interim basis, that access can only be granted in part or not at all, the interim notice must set out the specific provisions of the Municipal Freedom of Information and Protection of Privacy *Act* ("the *Act*") under which access is denied. [The named employee] provided a general overview of the sections under which, at first instance, access could be denied. Having said this, no final decision was made at that time. It was the intention of the Town of Caledon to have [the appellant] pay for the manual search of the record and for preparing the record for disclosure before any further steps were taken by the Town of Caledon. IPC Order P-81 also indicates that if an institution decides to charge fees, the requester must be notified. [The named employee] provided a fees request, along with an accompanying invoice explaining the costs, to [the appellant] in his letter of January 31, 2001.

The appellant submits that it was not until the conclusion of mediation on the appeal of the town's January 31, 2001 letter that the Town took the position that that letter did not represent a final decision. Until then, it followed the process prescribed under the *Act*, including issuing extensions prior to issuing a final decision. The appellant submits that the letter of January 31, 2001 cannot be regarded as an interim decision as it lacks three critical elements of an interim decision as outlined in Orders 81 and M-555:

- it does not provide the appellant with an estimate of future costs, but rather, provides what is purported to be an invoices with charges for search and preparation already completed;
- there was no suggestion that the volume of documents or complexity of its search would make it "unduly expensive to produce" a decision letter without a deposit;
- the letter does not state that a final decision had not been made, but rather, claims to have made decisions on disclosure. The letter indicates that

> responsive records have been organized into two groups, those which the appellant was free to inspect (upon payment of the amount stated in the invoice) and those to which the Town was refusing access pursuant to sections 7, 10, 11 and 12 of the *Act*.

The appellant further submits that the Town's conduct after the appellant initiated its appeal continued to be consistent with the January 31, 2001 letter representing a final, rather than interim decision. As noted in the Report of Mediator, for instance, it was only "just prior to referring this appeal for adjudication, [that] the Town has taken the position that it has not yet issued a substantive decision."

Analysis

I am satisfied that the Town's letter of January 31, 2001 was intended by the Town to be and ought to be treated as a final decision. In arriving at this conclusion, I do not regard as critical the specific words used in that letter (such as the failure to advise that it was an interim decision, or the failure to specify that a final decision was still pending). Rather, I have assessed the Town's intentions as expressed in the letter, whether the manner in which the Town responded to the request is consistent with the general goals of the interim access process, and whether it provided the appellant with the benefits contemplated by that process.

The wording of the letter of January 31 appears to express a final decision to deny access to some records pursuant to certain exemptions, and a final decision to provide access to others, which the appellant is invited to review upon making an appointment.

As I have indicated, the interim decision process is intended to provide an early and preliminary indication to an appellant of the likelihood of access being granted, as well as an estimate of the fees to be charged in an access request. The fact that the Town spent 47.5 hours in search and preparation time and applied two time extensions totalling 49 days before responding to the appellant is a strong indication that it was intending to provide a final and not an interim decision. Further, in a letter to this office of March 12, 2001, responding to a request to forward the records in dispute, the Town described the work covered by its "invoice" of January 31, 2001. It is apparent from that description, as well as from the representations in this appeal, that the bulk of the time covered by the invoice relates to the preparation of the records for disclosure. Again, the nature of the work done by the Town before its decision letter of January 31, 2001 is incompatible with the Town's characterization of that letter as an interim decision. It should be noted that in the letter of January 31, the Town invited the appellant to make an appointment to view the records to which it was granting access. From this, I conclude that as of January 31, the Town had substantially completed the preparation work on the records to which it had decided to grant access.

Other events during the course of this appeal are also significant. The appellant appealed the January 31 decision to this office by his letter of February 23, 2001. Part of that appeal was in relation to the denial of access. Following the filing of the appeal, the parties spent seven months in mediation through this office. During this time, the Town did not assert that it was

not available to the appellant to appeal denial of access and that the fee estimate was the only issue in the appeal. It was only just prior to the referral of this appeal to adjudication, in October of 2001, that the Town took the position that its decision of January 31 was an interim decision only, and that an appeal on denial of access was therefore premature.

Finally, as I have noted above, the interim decision process is intended to benefit both institutions and requesters alike. For requesters, the process provides some preliminary information so that they can make decisions about whether or not they wish to pursue a request or narrow the scope of a request in order to reduce the fees. If the fees appear unreasonably high, the ability to appeal the fee estimate at this stage gives rise to a single-issue appeal which can be mediated and adjudicated without much complication and time. If the Town is permitted to re-characterize its decision of January 31 as an interim decision at this stage, the appellant will have been denied much of the benefit of the interim decision process.

I conclude, therefore, that the Town intended to and did issue a final decision on January 31, 2001. As a result, I am satisfied that both the fee estimate and issues of denial of access are before me in this appeal.

Although I have reached the conclusion that the Town issued a final decision, I also find that its decision was incomplete, and that a supplementary final decision ought to be issued before any issues of denial of access are dealt with in this appeal. In issuing a supplementary final decision, the Town is directed to section 22(1)(b) of the *Act*, which provides:

> 22. (1) Notice of refusal to give access to a record or part under section 19 shall set out,
>
> (b) where there is such a record,
>
> (i) the specific provision of this *Act* under which access is refused,
>
> (ii) the reason the provision applies to the record,
>
> (iii) the name and position of the person responsible for making the decision, and
>
> (iv) that the person who made the request may appeal to the Commissioner for a review of the decision.

Also relevant here is section 22(3.1) of the *Act* which states:

> If a request for access covers more than one record, the statement in a notice under this section of a reason mentioned in subclause (1)(b)(ii) or clause (3)(b) may refer to a summary of the categories of the records requested if it provides sufficient detail to identify them.

I also urge the Town to refer to *IPC Practices* Number 1, which establishes guidelines for the contents of a decision letter.

Before concluding, I wish to address the issue of a deposit. Regulation 823 permits an institution that has given an estimate of an amount payable under the *Act* that is $100 or more to request a deposit from a requester before taking further steps to respond to the request [see section 7(1)]. On the facts of this case, the Town did not request a deposit prior to providing its final decision of January 31, although it did request a deposit many months later, with its revised fee estimate of October 10. I find that by its conduct prior to January 31, the Town has in effect exercised its discretion under section 7(1) of Regulation 823. It decided to proceed to a final decision without requiring a deposit from the appellant. Since my direction simply requires the Town to do what should have been done in that final decision, the Town is not entitled to apply section 7(1) at this stage. It should be noted that the Town will be entitled to recover reasonable fees from the appellant in respect of this request (see below); it is merely disentitled from requesting a portion of them before completing its final decision in response to my directions.

FEES

Section 45 of the *Act* provides, 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.
>
> (6) The fees provided in this section shall be paid and distributed in the manner and at the times prescribed in the regulations.

The relevant portions of Regulation 823 are:

> 6. 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.
>
> 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.

The Town submits in support of its fee estimate that the records covered by the request were physically located in the files of planning and legal staff, along with site specific application information. In order to locate the records, it was necessary to review filing cabinets belonging to various members of the planning and legal staff and search for file folders relevant to the request. Each file folder had to be reviewed and separated from the irrelevant site specific documents. In its representations, the Town has itemized the time for which fees are claimed in its letter of January 31. The Town states that 1.5 hours were spent by the Freedom of Information Officer "compiling resources" and 20.5 hours were spent in the manual search for records.

The Town submits that there are more than 800 documents totalling over 11,000 pages responsive to this request.

In view of the Town's representations, particularly its submissions on the volume of records covered by the request (which I find to be a reasonable estimate), I am satisfied that the 20.5 hours of search time is a reasonable reflection of the time required to conduct a search for responsive records. Since, however, I have not been given any information about the tasks included in the category of "compiling resources", I am unable to ascertain whether this is recoverable under the *Act*, and this part of the fee estimate is disallowed.

In addition to search time, the January 31 letter (as clarified in the representations) claims 25.5 hours for "preparing the documents". Although its representations do not provide more detail about the work included in this claim for 25.5 hours of preparation time, the Town has indicated in other correspondence to this office that the time claimed in its fee estimate of January 31 includes time spent "reviewing the documents in order to exclude any" personal information or other exempt information. Further, in its revised fee estimate of October 10, and as clarified in its representations, the Town claims that an additional 42 hours are required for severing the records for disclosure. It appears that, contrary to the indications in its January 31 decision, the Town has yet to perform some of the severance work it considers necessary.

I conclude from the Town's representations that it claims a total of 67.5 hours for time required to sever the records for disclosure.

Prior orders have found that two minutes per page to sever records is reasonable (see Orders MO-1169 and P-1536 for example). I accept that the Town may have to perform severances on some portion of the 11,000 pages of records it states will be disclosed to the appellant. However, based on the information before me as to the type of records covered by this request, I find it highly unlikely that every page of records will require severances. I find it more likely that approximately one-eighth of them may require preparation by way of severances. Applying this standard, I accept 42 hours as a reasonable estimate of the total time which may be required to perform severances for the purpose of disclosure.

With respect to the 105 hours claimed by the Town in its letter of October 10, the Town submits the following:

> The estimate for the preparation charges can be understood based on the following assumptions and calculations:
>
> 1. There are over 800 documents to be catalogued.
> 2. It would take 105 hours to undertake the necessary review (it would take approximately 8 minutes to review each document, determine how to identify each document, type each document into an index, and number each consecutive document).
> 3. 8 minutes multiplied by 800 documents totals 6,400 minutes or 106.67 hours.
> 4. 105 hours is a rounding down of 106.67.
> 5. 105 hours multiplied by $30.00 is $3,150.00
> 6. Shipping costs for the documents were also included in this amount of $3,150.00
>
> In estimating the time necessary for preparing records for disclosure, no account is taken of any of the following: any time that would be required in making a decision as to what exemptions might apply to each document; any time of other people who might be required to assist with this request; any time that might be taken for cross-referencing documents to ensure no duplication of the documents has occurred; any time that might be taken to proof-read the index of records; any time that might be required to physically copy the documents; any time that might be taken to package the records for shipment, transporting the records to the mailroom or arranging for courier service; and any time taken by counsel in preparing and reviewing correspondence to and from your office dealing with this appeal.

Prior orders of this office have found that time spent by an institution in preparing an index is a necessary part of its obligations under the *Act*, and cannot be recovered under section 45 (see Orders MO-1421 and P-1536). To the extent that the 105 hours claimed by the Town appear to

be almost entirely based on the preparation (or "cataloguing") of the records, this claim is disallowed. It is said that shipping costs are also included in the estimate of $3,150.00 for preparation time, but even if these were allowable, there is no breakdown provided as to the amount of these costs. I therefore disallow the claim for $3,150.00 in its entirety.

As for photocopying costs, it was clearly anticipated by the Town and the appellant that the appellant would be permitted to review the records the Town decided to disclose, and select those he wished to have photocopied. The Town has not given any reasons why this would not still be a practical way of proceeding. In view of this, I find the estimate of $2,200.00, based on the assumption that the Town would be photocopying 11,000 pages of records, unreasonable. The Town will be entitled to charge $.20 per page once the number of pages required by the appellant is determined.

In sum, I find that the Town is entitled to charge for 20.5 hours of search time and 42 hours of preparation time. Based on the rate established by the regulation ($7.50 per fifteen minutes), I find that the Town is entitled to recover $1875.00 from the appellant for search and preparation costs, plus photocopying costs to be established at the rate of $.20 per page.

In arriving at my findings, I have considered, and rejected, the appellant's submission that the Town ought not to be able to recover for any costs beyond January 31, 2001 on the basis that the Town misled the appellant as to the state of completion of its response to the request by that date. Given the volume of records covered by the request, I accept the possibility that some preparation of the records was intended to be performed by the Town between January 31 and the time set for the appellant's review of the records. Overall, I have assessed the reasonableness of the fees claimed by the Town, having regard to whether or not they have been substantiated in its submissions. As seen from the above, I have only allowed a modest portion of the costs referable to post-January activity.

An additional issue raised by the appellant is whether the Town ought to be precluded from recovering any of the fees set out in its letter of January 31, on the basis that the Town did not comply with the provisions of section 45(3). As set out above, section 45(3) requires an institution to provide an estimate of charges that will exceed $25, prior to providing access. The appellant submits that the "charges demanded by the Town of Caledon in its January 31, 2001 decision letter are improper because they make a demand for payment which was not, as required by section 45(3) for any amount of $25, preceded by a 'reasonable estimate'." In response, the Town states, among other things, that it discussed the matter of fees early in the process with the appellant and was told that "fees are not an issue". This is disputed by the appellant.

Beyond the requirement that it be done "before giving access to a record", section 45(3) does not specify a time for providing a fee estimate. However, where fees can be anticipated to substantially exceed the $25 threshold, it is to the benefit of both the requester and the institution that such an estimate be given early in the process. Indeed, since section 7(1) of Regulation 823 permits an institution to combine a fee estimate with a request for a deposit in certain circumstances, it is a common practice amongst institutions covered by the *Act* to provide such

estimates and requests for deposits at the early stages of responding to requests. The issue the appellant raises is whether a fee "invoice" based on work already performed, and given as part of a final decision, meets the requirement to provide an estimate in section 45(3). Further, the appellant also raises an issue about what might be an appropriate remedy where an institution has failed to comply with section 45(3).

It is not necessary for me to determine whether the fees detailed in the Town's letter of January 31, 2001 can be characterized as an "estimate" for the purposes of section 45(3). Even if they are not, and the Town should have provided some earlier indication of the amount of anticipated fees, I do not find that this leads to the remedy requested by the appellant, which is the disallowance of the fees claimed in that letter.

In the circumstances of this case, I find it unlikely that this appellant could have been caught by surprise by the costs associated with responding to his access request. The appellant and his client were participants in the resource study and discussions over the amendment to the Town's Official Plan which are the focus of this request, and are also involved in the OMB proceeding arising out of that amendment. The appellant is in a position to have a reasonable understanding of the scope of his request and the time that might be required to respond to it. Further, the appellant has not suggested that had he been given an earlier indication of the likely costs of his request, he might have narrowed the scope of that request. There is no therefore no suggestion that the lack of an early fee estimate has prejudiced the appellant in the sense of depriving him of the opportunity to narrow his request to achieve a lower fee, or led to any other consequence that would support the remedy requested by the appellant.

Further, I am obliged to take into account section 45(1) of the *Act*, which requires the recovery of fees by an institution. In this case, I have found that a portion of the fees claimed by the Town is reasonable. The effect of the appellant's position would be to divest section 45(1) of any significance, simply on the basis of a failure to provide an early fee estimate, and despite a lack of prejudice.

Given the above, while I do not preclude the possibility that there may be situations where a failure to provide a fee estimate under section 45(3) may warrant a remedy, particularly where real prejudice is shown, I am not persuaded that this is such a case.

In sum, I find that even if the Town has failed to provide an "estimate" under section 45(3), it is not precluded from recovering the fees I have found to be reasonable.

ORDER:

1. I order the Town to issue a supplementary final decision in accordance with the provisions of sections 19, 21 and 22 of the *Act*, treating the date of this order as the date of the request and without recourse to further time extensions.

2. I uphold a fee of $1875.00 for search and preparation time. The Town may charge the appellant for the cost of photocopying records after his review, at the rate of $.20 per page. The balance of the fees claimed are disallowed.

3. I order the Town to provide me with a copy of its supplementary final access decision.

4. Following receipt of the Town's final decision, the appellant may request in writing to me that the balance of this appeal proceed, and is requested at the same time to indicate what exemptions remain at issue.

5. I remain seized of the outstanding issues in this appeal, pending the Town's supplementary access decision and the notification from the appellant.

Original Signed By: March 4, 2002
Sherry Liang
Adjudicator