



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-1516**

**Appeal MA-010283-1**

**District Municipality of Muskoka**



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## **NATURE OF THE APPEAL:**

The District Municipality of Muskoka (the Municipality) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information relating to purchases made by the Municipality during the years 1995 to 2000, including the names of each vendor and information relating to payment. Following extensive discussions between the requester and the Municipality, the scope of the request was significantly narrowed to include only certain information pertaining to the years 1997, 1998 and 1999. Upon payment of the sum of \$328.96, the Municipality granted access to paper copies of most of the requested information, severing portions of the responsive records pursuant to the invasion of privacy exemption at section 14(1) of the *Act*.

The requester, now the appellant, appealed the Municipality's decision to charge a fee for the information sought, the severances made to the requested information and the fact that access was granted to the information only in paper format, rather than on disc, as requested.

During the mediation stage of the appeal, the Municipality decided to grant access to all of the information contained in the requested records. In addition, it issued to the appellant a revised fee estimate of \$348.66 representing four hours of preparation time at \$30 per hour, photocopying charges of \$.20 for each of 1128 pages and a courier charge of \$3.06. Taken with the fee already paid by the appellant, a balance of \$19.70 remains unpaid and in dispute.

The appellant also takes the position that the Municipality ought to be able to produce the requested information in disc format, rather than in the paper format it has provided to him. The Municipality provided the appellant with an explanation as to why it is not possible for it to produce the information in disc form but the appellant is adamant that it ought to be able to do so. This issue remains unresolved.

As further mediation was not possible, the matter was moved to the Adjudication stage of the appeals process. I decided to seek the representations of the Municipality initially and it made submissions in response to a Notice of Inquiry. The Municipality's representations were shared with the appellant, in their entirety, along with a copy of the Notice of Inquiry. The appellant made submissions with respect to the issues in the appeal and the Municipality was requested, and did, make further representations by way of reply in response to the information contained in the appellant's submission.

## **DISCUSSION:**

### **FEE ESTIMATE**

#### **The Positions of the Parties**

The essence of the dispute between the parties in this appeal lies in the Municipality's contention that it is only able to provide the appellant with the information he is seeking in a hard copy format. The appellant takes the position that the Municipality is capable of generating this information in an electronic format at a much lower cost than the fee estimate provided to him.

Based on my reading of the appellant's representations, he does not appear to take issue with the calculation of the fee estimate provided to him for the paper copies already disclosed. Instead, the appellant argues that the Municipality's computerized accounting systems ought to be capable of reproducing the requested information in an electronic format at a lower cost than that set out in the fee estimate. He submits that:

The records must be available in digital form because the accounting records are maintained on computer. All known accounting software used by municipalities and everyone else I have queried, provides the function of exporting data to spreadsheet and other compatible digital files. In order for the information recorded by the accounting system to be used for any purpose, it must be manipulated, analyzed and rendered useful by exporting data to spreadsheets, which then is used to create accounting and financial reports, such as the one produced, but without having to write figures in by hand.

...

In reviewing the printed reports [which were disclosed to him during mediation] it is very clear that the software is not primarily designed to print reports to paper as alleged by the institution. Since this is an obvious fact, the software must be primarily designed to export data to spreadsheets and other data types, which can then be used to print proper reports. How else can the institution explain that the software, as is, can only print numbers up to six figures? This is a multi-million dollar a month institution. It must comply with GAAP accounting rules. How can it comply with its fiscal reporting obligations if it must print thousands of pages on paper and then, scroll through the computer screen account by account, to fill in numbers larger than six figures by pencilling them in by hand. Their misrepresentation is evident by the absurdity of the position taken.

The appellant also has concerns about the inclusion of a number of vendors in the records for whom no sales or services were reported to the Municipality in a given year. The appellant questions why these vendors were included in the information provided to him and the additional cost that this entailed.

The Municipality quite frankly admits that it has a serious problem with its current accounting software. As presently written, the software only allows for the inclusion of a six-figure number and any amounts larger than six figures must be inserted by hand from the computer screen into the paper copy of the document. The records provided to the appellant were completed in this manner as the existing software is incapable of reading a number with more than six figures. For this reason, the Municipality insists that it was required to prepare the printed report which was disclosed to the appellant after adding by hand all of the dollar values for transactions involving over \$1,000,000. The time required to perform this activity is described as "preparation time" by the Municipality in its original fee estimate.

The Municipality also indicates that the accounting software it presently uses is deficient in eliminating references to past vendors because of yet another design flaw in the program. It states that:

The program doesn't recognize separate date/value categories as part of the print parameters. This means that if we asked to remove the \$0 values it could do this but the program would jumble all the years together so you wouldn't know what year the vendor acquired the money noted. Likewise, if you ask for a specific time frame [as was the case with the records ultimately produced to the appellant] you will get it separated into the years but with all the \$0 values included.

The Municipality further responds to the appellant's submissions by stating:

The [name of the software company] software used in the design of the accounting program is not designed to capture the information and transport it into an Excel [spreadsheet] format. The program is only captured in "printer code" as was advised to the appellant on several occasions and a sample provided. "Printer code" is in an illegible language that only the printer can read and translate into English when a hard copy is run.

The District's program reports are designed for the use of the municipality and the demand for the print parameter reports that [the appellant] has requested is not needed for the municipality's use and would only need to be designed for this particular instance.

## **Appropriateness of the Fee Estimate**

### **General Principles**

The charging of fees is authorized in section 45(1) of the *Act*, and more specific provisions regarding fees are found in section 6 of Regulation 823 under the *Act*.

Section 45(1) 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,

. . . . .

(b) the costs of preparing the record for disclosure;

(c) computer and other costs incurred in locating, retrieving, processing and copying a record;

. . . . .

- (e) any other costs incurred in responding to a request for access to a record.

Section 6 of Regulation 823 states, in part:

The following are the fees that shall be charged for the purposes of subsection 45(1) of the Act for access to a record:

. . . . .

- 4. For preparing a record for disclosure, including severing a part of the record, \$7.50 for each 15 minutes spent by any person.

In reviewing the Municipality's fee estimate, my responsibility under section 45(5) is to ensure that the estimated amount is reasonable in the circumstances. The burden of establishing the reasonableness of the estimate rests with the Municipality. To discharge this burden, the Municipality must provide me with detailed information as to how the fee estimate has been calculated, and produce sufficient evidence to support its claim. [Order MO-1504]

An institution processing a request is only required to charge a fee for the costs that are specifically listed in section 45(1) of the *Act*, and can only charge the amounts established in the schedule of fees under the Regulation for those costs.

**Findings**

Clearly, the Municipality's accounting software is fraught with fundamental deficiencies. However, the fact remains that the information requested by the appellant is only accessible by performing the procedure outlined in the Municipality's representations. The information was first printed and then, by hand, those dollar values over \$1,000,000 were transcribed from the computer screen to the matching hard paper copy. In my view, it was simply not possible for the Municipality to produce the information sought in the disc format requested. The only way for it to respond to the request was, therefore, to produce the paper copies and amend them by hand.

The Municipality argues that the preparation time spent adding by hand those amounts with a value over \$1,000,000 to the paper copy of the records entailed four hours work at \$30 per hour, for a total of \$120. An additional \$225.60 was charged for the cost of photocopying 1,128 pages of records, at \$.20 per page, along with a courier charge of \$3.06. The total amount due, according to the Municipality is \$348.66, less the amount already paid by the appellant (\$328.96) for a balance of \$19.70.

In Order 4, former Commissioner Sidney Linden made the following observations about charges for preparation of records for disclosure:

The fee estimate for preparation included costs associated with both decision making and severing, and I feel this is an improper interpretation of subsection 45(1)(b). In my view, the time involved in making a decision as to the application of an exemption should not be included when calculating fees related to preparation of a record for disclosure. Nor is it proper to include time spent for such activities as packaging records for shipment, transporting records to the mailroom or arranging for courier service. In my view, "preparing the record for disclosure" under subsection 45(1)(b) should be read narrowly.

In Order M-1083, former Adjudicator Holly Big Canoe made the following findings regarding preparation time and photocopying:

In the circumstances of this appeal, time spent by a person running reports from the personnel system would fall within the meaning of "preparing the record for disclosure" under section 45(1)(b) and, therefore, the rate of \$7.50 per 15 minutes established under section 6.4 of the Regulation may be charged. It should be noted, however, that the Board can only charge for the amount of time spent by any person on activities required to generate the reports. The Board cannot charge for the time spent by the computer to compile the data, print the information or for the use of material and/or equipment involved in the process of generating the record.

In my view, "preparing the record for disclosure" under subsection 45(1)(b) should be read narrowly (Order 4). It is not appropriate, in my view, to include time spent to "assemble information, proof data" within what is chargeable under section 45(1)(b).

Finally, the Board may not include the time to actually photocopy the records within the calculation of preparation time. The \$.20 per page photocopying charge referred to in section 6.1 of the Regulation is the maximum amount that may be charged for photocopying, which charge includes the cost of an individual 'feeding the machine' (Order 184).

In my view, the time spent by the Municipality hand-writing in the dollar values of amounts more than \$1,000,000 is properly considered to be "time spent on by any person on activities required to generate the reports" as described by Adjudicator Big Canoe in Order M-1083. In order to ensure the completeness of the information in the requested records, it was necessary for the Municipality to insert this information by hand, owing to the deficiencies in its computer accounting software. I find this to be an appropriate component of the preparation time portion of the fee estimate provided to the appellant.

In addition, I find that the photocopying and courier charges are within the ambits of section 45 and section 6 of Regulation 823. Despite the fact that the pages produced contain many listings for vendors which are either not current or are of no dollar value, the existing software used by

the Municipality does not allow for the creation of a record which does not include this unwanted information. Accordingly, I uphold this portion of the fee estimate as well.

**ORDER:**

I uphold the Municipality's decision to charge a fee of \$348.66.

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

Donald Hale

Adjudicator

February 25, 2002 \_\_\_\_\_