



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-1532**

**Appeal MA-010319-1**

**Town of Caledon**



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## NATURE OF THE APPEAL:

This is an appeal from an interim decision of the Town of Caledon (the Town), in which it provided the requester (now the appellant) with a fee estimate under the *Municipal Freedom of Information and Protection of Privacy Act* (the Act). The sole issue in this appeal is the reasonableness of this fee estimate.

This matter is related to two others which are or have been before me, Appeal No. MA-000374-1, an appeal concerning the Regional Municipality of Peel (the Region) and Appeal No. MA-010064-1, another appeal concerning the Town. In Appeal No. MA-000374-1, I issued an order (MO-1494) in which I substantially approved of the late transfers of records from the Region to the Town, and made other findings. In Appeal No. MA-010064-1, I issued an interim order (MO-1520-I) in which I ordered the Town to issue a supplementary final decision and established the amount of fees the Town was entitled to charge the appellant for responding to his request. The Town has provided me with a copy of its decision issued on April 3, 2002, following that interim order, including a detailed index of records.

The fee estimate in this appeal relates to the records transferred from the Region to the Town on April 27 and September 10, 2001. As a result of Order MO-1494, issued after the Report of Mediator in this appeal, I did not uphold the transfers of two of the records; further, I noted that one of these records has already been disclosed by the Region to the appellant on January 1, 2001 (see Order MO-1494, Appendix "A", Index of Records "D"). These records are accordingly not before me in this appeal.

The fee estimate of the Town with respect to the transferred records is as follows:

Manual search charges	14 hours x \$30.00/hour	\$ 420.00
Photocopying charges	1 copy of 49 pages (Sept.13/01 transfer) x 20 cents	\$ 9.80
	1 copy of 48 pages (Apr. 27/01 transfer) x 20 cents	\$ 9.60
Preparation charges: (compiling a list, formatting, typing, proof-reading and severing information)	7 hours x \$30.00/hour	\$ 210.00
		Total: \$649.40

## DISCUSSION:

### 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.

### **Representations**

The Town submits that its estimate of fourteen hours required to carry out a manual search is based on the time it would take to review the records in this appeal, and all the records in Appeal MA-010064-1 and to ensure that no duplication of records has occurred between the two appeals. It is said that the concern with such duplication is that it might ultimately lead to inconsistent decision-making by the adjudicator on the two appeals. The Town cannot determine the extent of any duplication with certainty until all of the records in each matter have been retrieved and reviewed.

The determination of 14 hours in the Town's submissions is based on an estimate of 2 minutes per page, which was found in Order M-555 to be a reasonable estimate of the time required to determine what information should be severed even where only a few severances are necessary

on each page. The Town estimates that it would take approximately 30 seconds per page to determine if a document in this appeal is identical or only similar to a document in Appeal MA-010064-1. Over 11,000 pages of material would have to be reviewed at 30 seconds per page for a total of 5,500 minutes or 91.67 hours. The Town's estimate, if submitted, has the effect of discounting these hours to one sixth (approximately 14 hours) for a value of \$420.00.

The photocopying charges are based on the costs permitted by section 6 of Regulation 823, R.R.O. 1990 under the *Act*, and are based on an assumption of 97 pages of records.

The Town's estimate of 7 hours of preparation time is based on 3.23 hours for severances (97 pages of records multiplied by 2 minutes each), plus 3 hours described in the following manner:

- 1) There are more than 17 documents to be catalogued.
- 2) It would take approximately 10 minutes to review each document, determine how to identify each document, type each document into an index, number each consecutive document and ensure that the description was cross-referenced with the Town of Caledon's Index, IPC Appeal No: MA-010064-1.
- 3) 10 minutes multiplied by 17 documents totals 170 minutes or 2.83 hours.
- 4) 3 hours is a rounding up of 2.83 hours to deal with the fact that there are more than 17 documents.

The Town submits that shipping costs of approximately \$23.00 are also included in the amount of \$210.00 claimed for "preparation charges".

The Town also submits that in estimating the time necessary for preparing records for disclosure, no account was 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 this office dealing with this appeal.

The appellant submits that the fact that these records were transferred from the Region means that, on or before the dates of transfer, the records had already been physically located and determined responsive to the request by the Region. The Town gained possession of the records pursuant to section 18(3) of the *Act*, based on the Region's view that the Town's interest in the records was greater than that of the Region. All that remained for the Town to do upon receipt of the records was to consider any applicable exemptions under the *Act* and to issue a decision to the appellant.

The appellant submits that the Town has not met its burden of establishing the reasonableness of its fee estimate. He states that the amount claimed for manual search time is "patently ridiculous", since there was simply no "searching" to be done. In this case, the number of hours the Town required to locate the records is zero.

Further, the appellant submits that nothing in the *Act* authorizes the Town to charge the appellant for a check of the records against the other 800 records in Appeal MA-010064-1. It is said that duplication is not an issue. The appellant states that it is “not the Town’s job to cull duplication between records coming from the Region’s files and from the Town’s to guard against ‘inconsistent-decision making by the Adjudicator’, and certainly not to do so at the Appellant’s expense”.

With respect to preparation of the records, the appellant submits that the only “preparation” a municipality is entitled to charge for under the *Act* is with respect to actually preparing the records to which access will be granted, such as severing exempt information from the records. A municipality cannot charge for activities such as reviewing the records for release, preparing a decision and responding to its office. The appellant submits that in Order MO-1520-I, I specifically found that compiling an index was a necessary part of the Town’s obligations under the *Act* which could not be recovered under section 45.

The appellant submits that, based on an assumption of 87 pages of records, it would be reasonable to estimate that one eighth might require severances. On this basis, a more reasonable estimate of the time required by the Town for preparation of the records would be 22 minutes (2 minutes per page times 11 pages).

The appellant takes no issue with the amount claimed by the Town for shipping. Although it accepts the cost per page for photocopying, it is the appellant’s understanding that there are 87 pages of records, not 97.

### **Analysis**

As set out above, section 45(1) of the *Act* requires an institution to recover the costs of “every hour of manual search required to locate a record”. I agree with the appellant that, in the circumstances of this case, no time was required for the Town to locate the records, since they were transferred to the Town from the Region pursuant to section 18(3) of the *Act*. The Town quite simply had no search to perform. I therefore disallow the claim for 14 hours of search time.

I also reject the Town’s position that time spent comparing the records in this appeal with those in Appeal MA-010064-1 ought to be recoverable as “search time”. To the extent that the Town wishes to ensure that its decisions (or the decisions of this office) on the same or similar records covered by two requests is consistent, this is to be applauded. In a sense, such an exercise is part of good decision-making. As part of the decision-making process, however, the costs of the time spent in this activity cannot be recovered from the appellant. It is neither time spent in “locating” a record, nor time spent in “preparing” a record for disclosure. In Order MO-1380, Senior Adjudicator David Goodis stated

"Preparing the record for disclosure" under subsection 45(1)(b) has been construed by this office as including (although not necessarily limited to) severing exempt information from records (see, for example, Order M-203). On the other hand, previous orders have found that certain other activities, such as the time spent reviewing records for release, cannot be charged for under the *Act*

(Orders 4, M-376 and P-1536). In my view, charges for identifying and preparing records requiring third party notice, as well as identifying records requiring severing, are also not allowable under the *Act*. These activities are part of an institution's general responsibilities under the *Act*, and are not specifically contemplated by the words "preparing a record for disclosure" under section 45(1)(b) (see Order P-1536).

Likewise, I find that time spent in comparing the records covered by one request, with those covered by another request, are part of an institution's general responsibilities under the *Act*, and are not specifically contemplated by the words "preparing a record for disclosure."

It should be noted that it is entirely possible to have the same records be the subject of overlapping requests, even by the same requester, and there is nothing inherently improper in this. Although such a circumstance introduces some complexity, the creation of detailed indexes by an institution will assist in ensuring consistent decision-making by both the institution and this office. In the case before me, I note that the Town has now created a detailed index in Appeal MA-010064-1, which should permit it to compare the records at issue in that appeal with those at issue in this appeal with relative ease.

In Order MO-1520-I, I stated that 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. Applying these principles, I therefore disallow the claim for three hours to be spent in "cataloguing" the records, which from the description of this activity provided by the Town, I understand to be essentially the same as preparing an index of the records. It should also be noted that Order MO-1494 contains an index of the records transferred from the Region to the Town which, despite requiring a modest degree of amendment, covers most of the records at issue in this appeal.

As in Order MO-1520-I, I accept that the Town will wish to sever information from some portion of the records in this appeal. Based on my understanding of the type of records at issue, I find it likely, as in Order MO-1520-I, that approximately one-eighth of them (11 pages) may be subject to severances.

The Town asserts that there is a discrepancy in the number of pages of records that are at issue in this appeal. On my review of the matter, the discrepancy is not significant, and may amount to a difference of several pages. It does not affect my determinations here.

I will therefore allow the Town to recover for 30 minutes of severance activity, which amounts to a "rounding up" of 22 minutes of severance activity (2 minutes per page times 11 pages). Based on a charge of \$7.50 per 15 minutes, the Town is entitled to \$15.00 for this time.

I allow the claim for \$23.00 in shipping fees.

The Town is entitled to charge the prescribed rate of \$.20 per photocopied page.

**ORDER:**

I do not uphold the Town's fee estimate in the amount of \$649.40. I allow a fee of \$38.00 plus \$.20 per photocopied page.

Original signed by:  
Sherry Liang  
Adjudicator

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April 30, 2002