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

ORDER MO-1543

Appeal MA-010138-2

City of Toronto

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NATURE OF THE APPEAL:

The City of Toronto (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the audio or video recordings of the former City of York council meetings held on various dates throughout 1989, 1990 and 1991.

The City issued an interim access decision advising that it had located 13 videotapes as responsive to the request. It provided a fee estimate for preparing the records for disclosure and requested a deposit of 50% of the amount. The City also indicated that the records contain personal information which would be exempt pursuant to section 14 of the *Act* (invasion of privacy) and would require severing.

The appellant appealed the City's fee estimate and its decision that it would need to sever personal information from the records before granting access. This office opened Appeal MA-010138-1.

The matter proceeded through mediation and then to inquiry. In Order MO-1492, Adjudicator Dora Nipp accepted the City's need to dub the original videotapes onto new tapes and concluded that the process of dubbing the 13 tapes from the originals to copies should require 15 minutes per tape, for a total time of 3.25 hours. This time would be spent activating two VCRs to dub each tape. She concluded that it would not be necessary for a City staff member to be present while the tapes are being copied.

Based on a review of a sample videotape, Adjudicator Nipp felt that although the vast majority of the tapes likely contain no personal information, the City's position that it must review the tapes and sever personal information prior to disclosure was reasonable. While she did not consider whether information in the tapes would actually be exempt under section 14 of the *Act*, the adjudicator felt that it was incumbent on the City to take a cautious approach and to make reasonable efforts to sever information that may be personal and may be exempt.

Adjudicator Nipp upheld the City's total estimated time of 65 hours to sever information from the tapes, but disallowed other charges.

She also found that a total time of 68.25 hours to prepare the 13 videotapes for disclosure was reasonable, as time for which the City could charge a fee under the *Act*.

The City subsequently submitted a request for reconsideration of Order MO-1492. This office's senior adjudicator dismissed the City's reconsideration request and Appeal MA-010138-1 was closed.

The City then wrote to the appellant advising that pursuant to section 20(1) of the *Act*, the time for responding to the request had been extended to November 12, 2002. The City informed the appellant that its Corporate Access and Privacy Office has located a department within the City which has the appropriate equipment to edit the videotapes. The City explained:

> [A]lthough this department [Facilities and Real Estate] does not usually provide such a service, they have agreed to duplicate the 13 tapes from EP mode to EP mode but they are unable to assist us with any editing (severing). Moreover,

> Facilities and Real Estate will only be able to do the duplication of the tapes during times when their machines are not being used for other purposes.
>
> Once the duplication is done, a CAP [Corporate Access and Privacy Office] staff member must review the duplicated tapes which are approximately 6 to 8 hours in length, sever appropriately and record the severances. Based on advice provided by both the Media and Communications Unit and Facilities and Real Estate, as well as on a previous review of a sample of the tapes, it has been determined that this will be very labour intensive. Due to the lack of resources, it is not possible for a CAP staff member to devote their entire time to this one request without jeopardizing the services CAP provides.
>
> Further, once the tapes have been severed, copies of the severed tapes will have to be made as part of mandatory records management. Again, the duplication can only be done by Facilities and Real Estate when their machines are not in use for other projects.
>
> The time extension, therefore, is required because the request involves a large number of tapes and to meet the 30-day time limit would unreasonably interfere with the operations of the City.

The appellant appealed the City's time extension and this office opened Appeal MA-010138-2, the present appeal.

I provided the appellant and the City with a Notice of Inquiry informing them that an inquiry will be held to review the City's application of the time extension. Both parties submitted representations.

DISCUSSION:

The sole issue for me to determine in this appeal is whether the extension of time claimed by the City as necessary to respond to the appellant's request was made in accordance with section 20(1) of the *Act*.

Section 20(1) of the *Act* states:

> A head may extend the time limit set out in section 19 for a period of time that is reasonable in the circumstances, if,
>
> (a) the request is for a large number of records or necessitates a search through a large number of records and meeting the time limit would unreasonably interfere with the operations of the institution;
>
> or

> (b) consultations with a person outside the institution are necessary to comply with the request and cannot reasonably be completed within the time limit.

In its decision advising the appellant of the time extension, the City uses the wording found in section 20(1)(a) of the *Act*. The reference is the same in the City's representations. There is no indication, either in the City's decision or in its representations, that it is also relying on section 20(1)(b) to extend the response time. Accordingly, I will only consider whether the City has extended the time in accordance with section 20(1)(a) of the *Act*.

In its representations, the City repeats some of the explanations it provided in its decision. The City confirms that it has determined that the tapes contain personal information, the disclosure of which would constitute an unjustified invasion of personal privacy and which would require severing. The City further states:

> The City acknowledges that standard VCRs exist in the corporation. CAP has limited access to one such machine. The real issue, however, is locating two standard VCRs that are available for the exclusive use by CAP for an extended period of time.
>
> …
>
> Once the tapes have been duplicated, a CAP staff member will need to view the tapes, sever and record where the severances have been made. It should be noted that the severing process requires careful concentration to ensure that only what needs to be severed is severed (for example, it may be just the name of an individual). Unlike paper records, a mistake in severing cannot be easily corrected; the original tape will need to be duplicated again and the proper severance made accordingly.
>
> The preparation of the 13 tapes for disclosure will require between 78 and 104 hours of viewing time and approximately 65 hours of severing time. The process is thus very labour intensive. Due to the lack of staff resources and a very high volume of access requests (over 900 for the first quarter of this year), it is not possible to allocate an entire staff member's time to processing this one request without jeopardizing CAP's ability to carrying out its functions, including meeting its obligations under the *Act*.
>
> Once tapes have been severed, copies of these severed tapes will then have to be made as part of mandatory records management. Again, the duplication can only be done by Facilities and Real Estate when it does not conflict with their normal work.
>
> The City has begun the process of preparing the first tape for disclosure. The original tape was sent by CAP to Facilities and Real Estate for duplication on April 10 and returned a week later. However, it has been determined that the

> severing cannot be done on the VCR that CAP has access to at present because this machine does not have a built in counter. The running time appears on the TV screen itself. This means that the severing has to be done "blindly". CAP is now trying to locate another VCR that is better suited for this purpose. This, however, is delaying the process.

In its representations, the appellant submits that the City has not met the criteria for section 20(1)(a) of the *Act*. The appellant states:

> In order to fall within the criteria outlined in section 20(1), the City must demonstrate that the extension requested is reasonable **and**, that the request is either for a large number of documents or would require consultation with an outside institution. [appellant's emphasis]
>
> …
>
> [t]he present request is not "for a large number of records" and does not necessitate "a search through a large number of records". The request is for *thirteen* videotapes, which have already been identified by the City…[appellant's emphasis]
>
> …
>
> [a]s is clear from the wording of the section, one of these two criteria must be met in order for delay to be justified under section 20(1)(a).

With respect to whether the City's time extension is reasonable, the appellant provides a chronology of what has transpired since the request was submitted to the City.

The appellant submits that over a year has passed since the appellant initiated the request and for the City to extend the time for the period stated in the decision is not reasonable under the circumstances. The appellant adds that it has offered alternatives to assist in resolving the issue in the present appeal, but the City has been unwilling or unable to accept these options.

The appellant states that in Order MO-1492, the adjudicator found that 65 hours to sever the tapes was reasonable (and consistent with the City's estimate), as was 3.25 hours to dub the tapes, for a total of 68.25 hours. The appellant adds:

> [A]ccordingly, the *entire* process of producing all thirteen videotapes is estimated to take a total of 68.25 hours of work. If the City spreads this time period out over seven months, it will be devoting *less than 2.5 hours per week* to our information request. The Appellant submits that this is not reasonable. [appellant's emphasis]

Finally, the appellant submits:

> [t]he City does not state how long it will take to perform the editing required. It simply states that the process will "be very labour intensive". In order to be granted a time extension, it is incumbent upon the City to provide detailed evidence to support its extension request (See: Order MO-1403). The City has not met this burden.

As stated above, I will not consider whether section 20(1)(b) of the *Act* applies in the circumstances of this appeal.

With respect to whether "the request is for a large number of records or necessitates a search through a large number of records", a consideration in section 20(1)(a), I agree with the appellant that a search is not required to identify the records at issue. The tapes have already been identified and the City has not claimed that its time extension is based on a need to search for records.

The City does, however, maintain that there are a large number of tapes involved. One might argue that generally speaking, 13 tapes might not be considered "a large number of records" in terms of the number of items. In the circumstances of this appeal, however, one has to consider that each tape contains 6 to 8 hours of recording, that is, 6 to 8 hours of information. This translates into a total of between 78 to 104 hours of information. If this information were in the form of transcripts, the hard copy records would, in my view, be considered "a large number of records". In either case, whether in the form of recordings or in written form, the information must still be reviewed.

I find, therefore, that the request "is for a large number of records".

With respect to whether "meeting the time limit would unreasonably interfere with the operations of the institution", the appellant submits that the adjudicator in Order MO-1492 has determined that the entire process of producing all 13 videotapes should take a total of 68.25 hours of work, or if extended over the length of the time extension, less than 2.5 hours per week. I do not fully agree with the appellant's conclusions with respect to the findings in Order MO-1492.

The issue in that Order was the amount the City could charge in fees under the *Act*. The 68.25 hour total that the adjudicator found reasonable consisted of 65 hours to sever the tapes and 3.5 hours to dub, activities for which the adjudicator determined the City could charge a fee under the *Act*. There are other activities in the processing of the request for which the City did not, and in my view could not, charge a fee and which were not included as issues in Order MO-1492. One example is the time spent in viewing the 13 tapes in order to identify the portions to be severed. Another example is the need for the City to produce copies of the final severed tapes for its own records. This is necessary not only for the City to maintain a complete file, but also required in the event that the appellant appeals the City's decision to sever portions of the tapes. This would have to be done before providing the tapes to the appellant.

If the videotapes are between 6 to 8 hours in length each, the time required to view the tapes is between 78 hours (13 tapes x 6 hours) and 104 hours (13 tapes x 8 hours). Using the time that the adjudicator found reasonable to dub the tapes, the time necessary to copy the severed tapes for the City's own files should be the same - 3.25 hours. These are times that the City did not include in its fee estimate and the adjudicator did not address, but which should be considered when determining whether the City's time extension is reasonable. This is in addition to the 68.25 hours required to physically sever the tapes, discussed in Order MO-1492.

The total time required to respond to the request is therefore between 149.5 hours (68.25 + 78 + 3.25) and 175.5 hours (68.25 + 104 + 3.25), with an average of 162.5 hours. In a 30 day time period, this works out to between approximately 37.5 and 44 hours per week, with an average of 41 hours.

According to the City, there are 2 staff members and one manager available to deal with the City's access requests. The City has received over 900 requests in the first quarter of this year. Given the City's CAP resources, the volume of requests the City must process on an ongoing basis and the mechanics involved in producing the severed tapes, a full response to the request within 30 days would not, in my view, be feasible.

I am satisfied that under the circumstances, meeting the thirty day time limit set out in section 19 of the *Act* would have unreasonably interfered with the operations of the City.

I will now consider whether the length of the City's time extension is reasonable.

As mentioned above, the appellant feels that because more than a year has passed since the appellant initiated the request, the City's time extension until November 12, 2002 is not reasonable. In my view, the time involved in this matter up to the issuance of the senior adjudicator's reconsideration decision is not a factor in determining whether the time extension is reasonable.

The determination of whether the City's fee estimate was in accordance with the *Act* was a separate issue from the matter at hand. The City could not reasonably have been expected to begin processing the request by preparing the records while the fee issue was unresolved. Had the adjudicator in MO-1492 upheld the City's estimate, or even reduced it, the appellant may have concluded that access to the records was not worth the cost and may have decided not to pursue the request. The City would have, in that case, unnecessarily expended resources to produce the records.

The total time required to respond to the request is between 149.5 and 175.5 hours, with an average of 162.5 hours. With 35 weeks between March 12, 2002 (the date of the reconsideration) and November 12, 2002, the time required to process the request would be between approximately 4.5 and 5.0 hours per week.

In applying the time extension, the City is dedicating roughly one day per week for a staff member to produce the tapes in response to this request. Considering the limited staff available

to process requests under the *Act*, the volume of requests received by CAP on an ongoing basis and their responsibility to respond to those requests in accordance with the *Act*, I find that the City's time extension is reasonable.

I am satisfied that the time extension applied by the City under section 20(1)(a) of the *Act* is reasonable in the circumstances. The request is for a large number of records and meeting the time limit set out in section 19 of the *Act* would unreasonably interfere with the operations of the City.

I have received a copy of the City's access decision with respect to the first tape which has now been provided to the appellant. The City has applied section 14 of the *Act* to sever some of the information and has determined that other portions are not responsive to the request. In its decision, the City states:

> [a] list of the approximate "times" of the severances (for the machine on which the tape was severed) is given.

I note that these times are shown in decimal form (e.g., 23.65 – 23.78). It would appear that the severance times are taken from a copying machine other than a standard VCR which counts in real time (e.g., 1:30 (one hour and thirty minutes) to 1:32 (one hour and thirty-two minutes)). Presumably, the appellant does not have access to the type of machine used by the City to produce the tape, but will use a standard VCR for viewing. In order for the appellant to properly identify where severances were made (and this office in the event of an appeal against the severances), the times would have to be listed based on the counter found in standard VCRs.

In order to ensure that severances are identified in a meaningful way, I will require the City to identify any severances in the tapes in the counter format found in standard VCRs.

The City appears to be providing the tapes to the appellant as the tapes are produced. To ensure that this continues, I will require the City to provide the tapes to the appellant, in severed or unsevered form according to its access decisions, as each tape is produced. The tapes are to be produced one at a time (as opposed to more than one tape being partially processed at any given time).

ORDER:

1. I uphold the City's decision to extend the time limit set out in section 19 of the *Act* to November 12, 2002.

2. I order the City to identify any severances in the tapes in the counter format found in standard VCRs.

3. I order the City to provide the tapes to the appellant as each tape is produced. The tapes are to be produced one at a time, as opposed to more than one tape being partially processed at any given time.

Original signed by: May 28, 2002
Alex Kulynych
Acting Adjudicator