



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1545

Appeal MA-010290-2

District Municipality of Muskoka



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 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 copies of all invoices rendered to the Municipality by a named engineering firm along with the accounting ledger sheets showing details of each payment made to this firm. In addition, the request sought information concerning the process used to engage the services of the engineering firm over the time period stipulated in the first part of the request.

The Municipality located records responsive to the second part of the request and provided them to the requester, free of charge. With respect to the first part of the request, the Municipality provided the requester with an interim fee estimate in the amount of \$3,995.20. The Municipality also advised the requester that some of the information sought may fall within the third party information and personal information exemptions in sections 10(1) and 14(1) of the *Act*, respectively. The fee estimate was broken down as follows:

- Photocopies of 5,180 pages of records at \$.20 per page - \$1,036.00
- Search time for responsive records, 70 hours at \$30.00 per hour - \$2,100.00
- Preparing the records for disclosure, 28 hours at \$30.00 per hour - \$840.00
- Courier fees - \$19.20

The Municipality also advised the appellant that, pursuant to its records retention by-law, its records only date back a total of six years from the date of the request, or back to August 9, 1995.

The requester, now the appellant, appealed the Municipality's interim fee estimate.

During the mediation stage of the appeal, the appellant confirmed that he wishes to appeal the Municipality's interim fee estimate with respect to both the accounting ledger sheets and the invoices of the engineering firm. As further mediation was not possible, the matter was moved into the adjudication stage of the appeal process.

I sought the representations of the Municipality, initially and received submissions from it, which were shared with the appellant, along with a Notice of Inquiry. The appellant also made submissions in response to the Notice.

DISCUSSION:

REASONABLENESS OF THE FEE ESTIMATE

The Municipality submits that its fee estimate is reasonable, given the complexity of the searches which it was required to undertake in several different locations. It indicates that the responsive records for the period August 1998 to August 2001 are located in the Municipal offices while those covering the previous three years are maintained in an off-site archive facility. In addition, the requested records are not maintained under the name of the consulting firm, but rather, are kept in the file relating to the many projects for which the consultants were engaged. For this

reason, searches of a large number of record-holdings are required in order to locate all of the responsive invoices.

The Municipality also advises that:

[the consulting firm] submits an average of 9 invoices per month; each invoice contains an average of 7 attachments justifying their invoice. Since they have been working as consultants for the District for more than 6 years they have generated at least 4536 pieces of information relating to this request. This would reduce the information provided to the appellant by 644 pieces (reducing the photocopying estimate to \$907). This may change the search time by a few minutes but basically the same amount of documentation must be searched through and information must be retrieved in the same format. Even if the information is reduced, the search time still represents approximately 1 minute per piece of information being retrieved.

In response, the appellant takes the view that the number of invoice documents is excessive and questions why they are not all compiled at the same location. He also suggests that the accounting ledger information which he is seeking ought to be easily retrievable electronically and should not be subject to any of the exemptions contained in the *Act*. The appellant concludes his submissions by arguing that the release of the ledger and the invoice information would be in the public interest and should not attract any fee. He suggests that "I would provide a public service of ensuring that institutions with admittedly deficient accounting systems does not contain errors."[sic]

Findings With Respect to the Fee Estimate

The Municipality acknowledges that the responsive invoice records consist of some 4,536 pages of documents. The fee which could be charged for the photocopying of this number of records is a maximum of \$907.20.

However, the Municipality has not provided me with sufficient evidence to substantiate its claim that it would require 70 hours of search time to locate the responsive invoice information. It indicates that the records are maintained in two facilities and that the invoices themselves are located in many different files relating to a multitude of projects for which these consultants were engaged. In my view, rather than searching through each file maintained in these locations, the Municipality could reduce the time required by examining its accounting ledger entries and determining which projects the consultants were involved in. The Municipality could then restrict its search only to those files and not be required to examine all of its record-holdings for invoices rendered by these consultants. I am prepared to allow the Municipality as much as 35 hours to accomplish this search for a maximum amount of \$1,050.00.

Based on its review of the records, the Municipality has determined that approximately 1,680 pages of records will require severing as they contain information which is subject to either sections 10(1) or 14(1) of the *Act*. The records may require the severance of personal

information or confidential third party information prior to their disclosure to the appellant. In my view, this is a reasonable estimate of the work required to prepare the records for disclosure by severing out exempt information. I will, therefore, allow the Municipality a maximum of 28 hours, to perform the task of preparing the records for disclosure, at a cost of \$840.00.

I find no merit in the appellant's contention that no fee ought to be charged for the search and preparation time on the basis that he will be performing a "service to the public" in requesting this information. The appellant did not request a fee waiver under section 45(4) of the *Act* and the disclosure of the information will not "benefit public health or safety" under section 45(4)(c).

By way of summary, I find that the Municipality is entitled to charge a maximum fee estimate of \$2,797.20 in responding to this particular request. Should the appellant choose to pay the fee estimate and the Municipality performs the necessary work in responding to it, the Municipality is entitled to charge only for the time actually spent in searching for the records or preparing them from disclosure, along with the photocopying charges for the actual number of records which are located, to a maximum of \$2,797.20. If the Municipality's search and preparation time requires less time than is described above, I order that it reimburse the appellant for any amounts paid in excess of the fees upheld in this order.

ORDER:

I uphold the Municipality's decision to charge a fee and vary it to a maximum of \$2,797.20.

Original signed by: _____
Donald Hale
Adjudicator

May 29, 2002