



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-1544**

**Appeal MA-010288-2**

**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 “records concerning contracts awarded for the Public Works Department, in excess of \$1,000,000, for the last ten years.” The request, dated June 14, 2001, then delineated 13 specific types of records sought for each contract.

The Municipality responded on July 18, 2001 by providing the requester with an interim fee estimate and decision letter advising that access to the requested information would be granted, subject to the application of the third party information and personal information exemptions in sections 10(1) and 14(1) respectively, upon payment of 50% of an estimated fee of \$4,288.36. The fee was calculated on the basis that 5300 pages of records were responsive to the request and was broken down as follows:

- Photocopies of 5300 pages at \$.20 per page - \$1,060.00
- Search time of 5160 minutes at \$7.50 for each 15 minutes - \$2,580.00
- Severing the records (preparation of the records for disclosure) - \$630.00
- Courier fee - \$18.36

In response, the requester amended the scope of his request to include information from contracts in excess of \$100,000 dating back 20 years. In addition, the requester limited the scope of the request to include only a “check list of the bids received, prices and other information recorded on the opening of the bids” and “the evaluation performed on each tender”.

The Municipality then prepared a further interim fee decision dated October 29, 2001 in which it again advised the requester that, subject to the application of the exemptions in sections 10(1) and 14(1), access would be granted to the records responsive to his amended request upon payment of 50% of its amended fee estimate of \$5,679.00.

On October 31, 2001, the requester, now the appellant, appealed the Municipality’s fee estimate.

During the mediation stage of the appeal, the appellant agreed to narrow the scope of the request to include only the “bid results checklist”, dating back to 1994. This information was conveyed to the Municipality by the Mediator yet no revised fee estimate was forthcoming. As no further mediation was possible the matter was moved to the adjudication stage of the appeal process.

I decided to seek the representations of the Municipality, initially as it bears the burden of establishing the appropriateness of its fee estimate. The Municipality provided me with its submissions, which were shared, along with a Notice of Inquiry, with the appellant. The appellant also made representations in response to the Notice.

## **DISCUSSION:**

### **WHAT INFORMATION IS THE REQUESTER SEEKING?**

In the present appeal, there exists some confusion about exactly what information is being sought by the requester. During the mediation stage of the appeal, the appellant narrowed the scope of his request to include only information contained on the “checklists” dating back to 1994. This information was conveyed to the Municipality by the Mediator by telephone on December 13, 2001 and again in writing on January 15, 2002. At that time, the Mediator requested the Municipality to reconsider its decision respecting the sum charged for preparation time as the narrowed request involved many fewer records than originally sought by the appellant. The Municipality agreed that an amended fee estimate was appropriate as the scope of the request had been narrowed significantly. The Municipality did not, however, issue a further decision to the appellant respecting the fee required to access the “checklists” from 1994 to June 2001.

In my view, as reflected in the appellant’s appeal letter and the Mediator’s Report, the scope of the request was narrowed to include only the checklists maintained by the Municipality for contracts with a value of more than \$100,000 from 1994 to June 2001. The Municipality has not provided me with any information as to the fee which it wishes to charge for the search and preparation time required to locate and sever the records which are responsive only to the narrowed request, despite acknowledging that a revised fee estimate was required. The fee estimate provided to the appellant on October 29, 2001 includes the time spent searching for records created prior to 1994 and also includes records beyond those described as the “checklists”. These items do not form part of the request as ultimately formulated by the appellant.

Accordingly, in my view, I am unable to determine the appropriateness of the fee estimate issued to the appellant on October 29, 2001. This fee estimate was based on the charges which covered an array of records over a 20 year period, as opposed to search and preparation time and photocopying for a much more limited number of records covering only a seven-year time frame. Because the Municipality has not provided me with the evidence which I require in order to determine whether the fee estimate which it has issued is a reasonable one, I will order that it provide to the appellant an updated fee estimate taking into account only the time required for it to conduct the search for records responsive to the narrowed request and the photocopying charges which will flow from it.

## **ORDER:**

1. I order the Municipality to issue to the appellant no later than **June 19, 2002** a detailed fee estimate setting out the search time, preparation time and photocopying charges payable for the conduct of a search for the “checklist” records for the period 1994 to June 2001.

2. I order that the Municipality provide me with a copy of the fee estimate which is sent to the appellant.

Original signed by:  
Donald Hale  
Adjudicator

May 29, 2002