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

ORDER MO-1492

Appeal MA-010138-1

City of Toronto

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NATURE OF THE APPEAL:

This is an appeal from a decision of the City of Toronto (the City) made under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The appellant sought access to the audio or video recordings of the former City of York council meetings on specific dates between 1989 and 1991.

The City issued an interim access decision advising that it had located 13 videotapes as responsive to the request. It estimated that the fee to prepare the responsive records for disclosure would be $4,875.00, and requested a deposit of 50% of that amount. The City also indicated that the records contain personal information, pursuant to section 14 (invasion of privacy) of the *Act*, which 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 the appellant access to the records.

During mediation of this appeal, the appellant accepted that she should be required to pay the City $5.00 for the cost of each necessary blank videotape. Mediation was not successful and this appeal proceeded to the adjudication stage.

I sent a Notice of Inquiry to the City, initially, on the issue of the fee estimate only. The City provided representations, which were shared with the appellant in their entirety, together with a copy of the Notice. The appellant also returned representations.

DISCUSSION:

FEE ESTIMATE

Introduction

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*. These provisions state, in part:

> **45.** (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;
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> (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.

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:

. . . . .

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.

. . . . .

6. The costs, including computer costs, incurred by the institution in locating, retrieving, processing and copying the record if those costs are specified in an invoice that the institution has received.

In reviewing the City'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 City. To discharge this burden, the City must provide me with detailed information as to how the fee estimate has been calculated, and produce sufficient evidence to support its claim.

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.

The City's fee estimate is broken down as follows:

"Creating" new records • 65 hours at $30.00 per hour	$1,950.00
Editing (severing) • 39 tapes at 100 minutes per tape = 65 hours at $30.00 per hour • inputting of statement, 10 minutes per tape = 6.5 hours at $30.00 per hour	1,950.00 180.00
Editing to produce records for requester • 20 hours at $30.00 per hour	600.00
Cost of videotapes • 39 tapes at $5.00 each	195.00
Total estimated cost:	**$4,875.00**

I will review and determine the reasonableness of each of the four main components of the City's fee estimate.

"Creating new records"

The City states:

> The original videotapes are Extended Play (EP) tapes of either 6 or 8 hours in length. These old format tapes cannot be duplicated. The City would have to dub them onto 2-hour Short-Play (SP) tapes, in essence creating at least 39 "new" records.
>
> To do this, the Media Co-ordinator must view and edit the tapes, including cueing, checking and adjusting for colour and resolution etc. (The quality of a tape tends to deteriorate each time it is duplicated). It is estimated that 65 hours of staff time is required to produce the 39 new tapes.

The appellant makes no specific submissions on this aspect of the City's fee estimate.

In my view, this component of the City's fee estimate is excessive. While I accept that the original videotapes will need to be dubbed onto new tapes, I can see no reason why the format needs to be converted from EP to SP, thus requiring 13 original tapes to be recorded onto 39 new tapes. Most standard videocassette recorders (VCRs) available to consumers allow one to record and playback videotapes at either the SP or EP speed, and the two formats are compatible with one another. The advantage of the EP format is that, because it records at a slower speed, it uses less tape. The disadvantage is that the image and audio quality tends to be lower as compared to the SP format. In the absence of any evidence that the quality of the EP dub would be unreasonably poor, the City should be expected to dub the original 13 tapes onto 13 new tapes. On this basis, I do not accept the City's statement that the "old format tapes cannot be duplicated".

Based on the above, the City's estimated time of five hours per tape to create the new tapes also is excessive. To make a new tape, all one must do is: connect two VCRs to each other (presumably the City already has this in place); insert the original tape into the first VCR; insert the new tape into the second VCR; set the recording speed on the second VCR to EP; and simultaneously press "play" on the first VCR and "record" on the second VCR. It would not be necessary for a City employee to remain in the room while the tapes wind through the VCRs, although the person would need to return to the room at some point after the taping is completed to begin the process again for the next tape. In my view, this operation can be done easily in 15 minutes per tape. Given that the dubbing could be done with 13 tapes, a reasonable fee estimate for dubbing the tapes would be 3.25 hours at $30.00 per hour = **$97.50**.

"Editing" (severing)/editing to produce the records for the requester

The City submits:

> These 39 tapes then need to be severed pursuant to section 14, which equates to further editing. It is estimated from the review of a sample of four videos that on average there would be 5 or 6 severances per tape. The Media Co-ordinator is not

> authorized to make decisions on the applicability of exemptions under the *Act*. A Corporate Access and Privacy (CAP) staff member would need to sit with the Media Co-ordinator to view the tapes together (note no fees have been charged for viewing time) and to advise and ensure that the appropriate severances are made in accordance with the *Act*. The time spent by this individual would also be about 10 minutes per edit.
>
> In addition, the Media Co-ordinator would need to insert a "statement" indicating where each severance has been made and why. This would be approximately 10 minutes for each severance. Once this is done, the 39 tapes will need to be edited again to produce copies of tapes for release to the requester (appellant). The Media Co-ordinator would again need to cue, check for colour, resolution etc. About another 20 hours of staff time would be required to do this.

The appellant provides detailed submissions on why she believes either no personal information would be contained in the tapes, or why, if there is, it would not be exempt under section 14 of the *Act*.

In my view, the City's decision that it must review the tapes and sever any personal information prior to disclosure is reasonable in the circumstances. While I accept that the vast majority of the tapes likely contain no personal information, I also believe it is reasonable to expect that, on occasion, personal information in the form of verbal statements or in the form of images of individuals would be contained on the tapes. Based on my own review of a sample of the videotapes, I find that the City's position is reasonable.

In addition, while it may be the case that some information the City considers personal does not meet the definition of "personal information" in section 2(1), and while some information which in fact is personal may not in fact be exempt under section 14, it is nevertheless incumbent on the City to take a cautious approach, and to make reasonable efforts to ensure that information which may be personal and which may be exempt is severed. Whether or not the City has appropriately severed personal information is a matter that may be considered by this office on appeal, once the City has gone through the severance exercise and made a final decision, but it would not be appropriate for me to consider this issue at this time.

The City estimates it will need to make five or six severances per each two hours of tape, and that this will take approximately 100 minutes per tape, which translates to approximately 17 to 20 minutes per severance. In the circumstances, I find this estimate to be reasonable, given that each tape must be carefully reviewed and edited to ensure no personal information is disclosed, although the final fee for this exercise should be reduce in the event that fewer severances are required. Therefore, I uphold the fee estimate of 65 hours at $30.00 per hour = **$1,950.00**.

While the insertion of the "statement" may be a good practice in many circumstances, I do not find that in the immediate situation it is necessary. In my view, City's quote of $180.00 unreasonably adds to the appellant's cost. I also do not see the need for a final edit, for which the City quoted $600.00, to cue the tapes and check for colour and resolution. I find that these

two parts of the fee estimate are not appropriate and I disallow these charges of $180.00 and $600.00 respectively.

Cost of videotapes

The appellant has indicated that she accepts the $5.00 charge per new tape. However, as I found above, only 13 new tapes need to be provided, which leads to a fee of **$65.00**.

Additional submissions of the City

The City asserts that the fee for processing the request internally is considerably lower than quotes it received from private videotape reproduction companies. In support of its position, the City has contacted three outside companies. It states that two of the three companies provided an estimate exceeding that of the City, and the third provided an hourly fee of $75.00 but could not provide an estimate of the time required. In comparison, the City states that its fee estimate is "more than reasonable." I accept that outside companies may charge a considerably higher fee for the work required to prepare the records for disclosure. However, the *Act* is clear in setting out the hourly fee to be charged for preparing records for disclosure and, based on a reasonable estimate of the time required to do the work, the *Act* dictates what fee may be assessed. If it so happens that an outside company could or would charge more for the work, this cannot provide a basis for a higher fee under the *Act*.

Conclusion

A total fee estimate of **$2,112.50** is reasonable in the circumstances, and I uphold the City's fee estimate to this extent only. Should the appellant continue to seek access and decide to pay a deposit of 50% of that amount, the City should reduce the charge in the event that the preparation time is less than estimated.

ORDER:

I do not uphold the City's fee estimate in the amount of $4,875.00, and order that the fee estimate be reduced to $2,112.50.

December 13, 2001

Dora Nipp
Adjudicator