



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1638

Appeal MA-010363-2

The Regional Municipality of Niagara



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BACKGROUND:

A construction company (the appellant) asked the Regional Municipality of Niagara (Niagara) for copies of records related to a specific civil action. The appellant wanted to know the payments made to a specific law firm and any other firm. It also wanted copies of each of the judgments in the case, the settlement documents and the cheque used to make the settlement payment.

Niagara responded to the appellant's request by finding that it was "frivolous and vexatious" under section 4(1)(b) of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The appellant successfully appealed this decision. Adjudicator Donald Hale ordered Niagara to issue a decision letter (see Order MO-1548). Niagara then provided an estimate of the amount the appellant was to pay in order to obtain copies of the records.

NATURE OF THE APPEAL:

The appellant now contests Niagara's fee estimate that was in the amount of \$327. During mediation, the appellant revised the request. The appellant now seeks

- printouts from the accounting system listing all payments to any law firm(s) representing Niagara in the [specific civil action] from prior to the action to date
- copies of the judgment and reasons for judgment issued by the courts
- the final settlement documents executed with the plaintiff(s) including any additional records required to identify the amount(s) actually paid to settle the action

Niagara confirmed that its fee estimate also applied to this revised request. Because the parties could not resolve any other issues through mediation, the appeal was moved to adjudication.

My first step was to seek representations from Niagara about the issue in dispute. Niagara provided representations in which it corrected a mathematical error in its estimate. The fee estimate amount should be \$417. I shared Niagara's representations with the appellant. The appellant provided responding representations, which I, in turn, shared with Niagara. Finally, Niagara delivered reply representations. I have considered all of the representations before me.

CONCLUSION:

Niagara's fee estimate is reasonable.

ANALYSIS:

Introduction

The *Act* requires an institution to charge a fee for responding to requests. The relevant section states:

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,

- (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.

Sections 6, 7 and 9 of Regulation 823 provide more specific requirements for the calculation and payment of these fees.

This office may review the amount of the fee estimate, and may uphold the decision or vary it.

Niagara's fee estimate was calculated based on these assumptions

- 3 hours to manually search for records of a financial nature
- 3 hours to manually search for documentation possibly contained in the files of the Corporate Services Department
- 3 hours to manually search for documentation possibly contained in the files of the Public Works Department
- 2 hours to manually search for documentation possibly contained in the files of the Office of the Regional Clerk
- 2.5 hours to prepare the records for disclosure
- 60 pages of records to be photocopied

The appellant disputes the total amounts that Niagara has estimated for searching for the records and preparing them for disclosure.

Representations

In defence of its estimate, Niagara makes these representations.

[We] would point out that item 1 in that letter still requires that a search be undertaken to determine if any solicitors other than [the named lawyer] were engaged and/or paid by it in respect of the subject civil action. It is this search that is estimated to take three hours. Time to obtain the referenced computer printout is not likely to require more than 0.5 hours. The ensuing computer

printout to which the requester refers may reference other billings, which would be, or could be severable under the Act.

...[S]earch time is required for [Item 2] and for the settlement documents referenced in Item 3 of [the request].

As part of the preparation to respond to this request, [we] undertook a search of the records of the Public Works Department between June 26 and August 9, 2002. While the results of the search were fruitless, the search did consume three hours of staff time. [We believe we are] entitled to that fee which is referenced in part (c) above, being an extract of [our] fee estimate letter. In support of the above, we attach a copy of a memorandum ... advising of that search as Exhibit C.

It was this experience that led [us] to estimate the time requirement for items (a) and (b) referenced in our fee estimate letter.

.....

In [our] fee estimate, [we] allowed for a review of all relevant documents that might be found to be responsive to the request to determine if one or more exemptions under Sections 6 to 15 of the Act might apply. Since the search in item (b) will entail a review of files of our legal counsel, the probability of such an occurrence is, in [our] opinion . . . , higher than normal.

Niagara also argues, in reply, that:

- It cannot simply provide a printout from the accounting system in this case because the appellant has asked for records related to more than one law firm/lawyer;
- The judgment document is contained in a file 125 cm thick and must be searched for.

These are the appellant's representations:

There are three items to this request:

1. Printout from the accounting system. – In a similar request under Order #MO-1465 the Institution produced 5 pages of printouts without fee. In a subsequent follow-up for updated records they charged \$15.00 as a search and preparation fee for one page. Nothing was noted as having been prepared on the face of the records in that instance. I did not appeal since the fee was nominal. I do not know how many pages are involved in this case, but there is nothing much to search for, but the name used in the accounting system.

2. Copies of the Judgment and Reasons for Judgment in that case. This is a public document and [Niagara's Director of Legal Services] would have this document readily available from his files since it was a significant case. Fees should be the photocopies and nominal search, if any, with no preparation involved.
3. Final settlement documents and any other documents as may be required to identify the actual amount paid in the settlement. – This would also be a document readily available by asking [Niagara's Director of Legal Services] for a copy from his files. Nominal search and very little, if any, preparation is required.

I don't see more than 30 minutes of time going towards search and preparation combined. The physical work of photocopies is covered by the \$0.20 fee, letters to requesters are not billable, and postage is nominal. I can receive the records by fax to avoid postage or courier fees. The fee should not be more than around \$30.00 all inclusive.

Findings

I find that Niagara's fee estimate is reasonable because Niagara's initial representations and its response to the appellant's representations provide sufficient evidence to support its estimate.

Niagara indicates that it must conduct four separate searches in different departments in order to locate records that might respond to the appellant's request. I find no reason to question its judgment about this matter. I am not persuaded by the appellant's submission that the records are easily located by simply asking Niagara's Director of Legal Services because most bureaucratic organizations, such as municipalities, have developed more complex filing systems. Furthermore, Niagara supports its estimate of three hours for three of the searches by having already undertaken one of those searches. Finally, I am also not persuaded by the appellant's example of Niagara's response in Order MO-1465. The appellant's request in that order was much more restricted because it only related to one named law firm. This request is for information related to several law firms as well as for other records.

Therefore, I conclude that Niagara estimated the fee in a reasonable way taking into consideration the *Act* and Regulations and the steps necessary to respond to the appellant's request.

ORDER:

I uphold Niagara's fee estimate of \$417.

Original signed by: _____
Rosemary Muzzi
Adjudicator

_____ April 28, 2003 _____