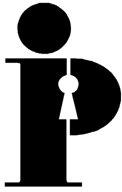

Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER MO-1718

Appeal MA-020232-1

City of Ottawa

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NATURE OF THE APPEAL:

The City of Ottawa (the City) received a multiple-part request in April 2002 (the 2002 request) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for information relating to the Community Placements Program (the Program) within the City.

While the City was processing his request, the requester (now the appellant) narrowed the scope of his request. After the final narrowing of the request, the City issued a fee estimate in the amount of $1,690.00.

The appellant appealed the City's fee estimate.

During the mediation stage of the appeal process, the appellant submitted a fee waiver request. The City denied the waiver request. The appellant is also appealing the denial of the fee waiver request.

Also during mediation, the City revised its fee estimate to $1,945.00. The City provided the appellant and this office with a breakdown of the amended estimate and an explanation of why it varies from a fee charged in response to a request for similar information in 2000 (the 2000 request). The breakdown listed 13 items of requested information and set out details regarding the calculation of fees and the total to be charged for each item.

The appellant informed the City that he does not object to its fee for items 5, 6, 7, 9, 10, 11, 12 and 13. As a result, only items 1, 2, 3, 4, and 8 remain at issue. The fee estimate for these items comes to $1,825.00.

The appeal was moved to the adjudication stage.

I first sought representations from the City by issuing a Notice of Inquiry. In addition to submitting representations, the City issued a new decision in which it indicated that the personal privacy exemption might apply to exempt portions of item 13 from disclosure. The City agreed to share its representations with the appellant in their entirety.

I then sought representations from the appellant and included a copy of the City's representations with my Notice of Inquiry. The appellant submitted representations in response and agreed to share them in their entirety with the City.

The appellant's submissions raised issues in response to those submitted by the City. Therefore, I decided to seek reply representations from the institution and included, with my request, a complete copy of the appellant's representations. The City submitted reply representations.

DISCUSSION:

FEES

Introduction

The charging of fees is authorized by section 45(1) of the *Act*, which states:

> 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.

Section 6 of the Regulation also deals with fees. It states, in part, as follows:

> The following are the fees that shall be charged for the purposes of subsection 45(1) of the *Act* for access to a record:
>
> 1. For photocopies and computer printouts, 20 cents per page.
>
> 2. For floppy disks, $10 for each disk.
>
> 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.
>
> 5. For developing a computer program or other method of producing a record from machine readable record, $15 for each 15 minutes spent by any person.

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

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

City's initial representations

The City states that the requested information is not readily available since it is not information that it is required, by law, to report and it does not have a computer program to generate the information. The City indicates that the information had at one time been stored in a Microsoft Access (Access) database. The City acknowledges that the appellant made a similar request for information of the former Regional Municipality of Ottawa-Carleton (the Region) in 2000 and that the appellant paid a considerably smaller fee for this request. The City provides the following reasons for the difference in the two fee estimates:

- The Region made an error in calculating the fee. The fee should have been considerably higher.

- The information requested in 2000 was stored in a readily accessible format in Access, while the information is now stored in an Oracle database, which requires a developer's time to retrieve the information requested.

- There are more community placement organizations with a corresponding increase in the amount of time it would take to retrieve the requested information and determine whether any exemptions apply under the *Act*.

The City states that due to the expansion of the Program and the increased volume of information required to administer it, the City upgraded to the Oracle database, which is a more sophisticated database program, to store the information. The City indicates that to retrieve the data or to create the fields that the appellant has requested requires either an "sql ['structured query language', the standard language used for querying databases] or impromptu tool [a one-off ad-hoc program used to extract information from a database]". The City submits that a developer is required "to process the query" and "to develop a computer program to access certain fields or create fields requested by the appellant."

The City states that prior to issuing its fee estimate for $1,945.00 it convened a staff meeting with the people most knowledgeable about determining an appropriate fee estimate. Present at this meeting were the following persons:

- The City's Freedom of Information Coordinator

- The Policy and Planning Officer, Strategic and Business Planning in the Innovation Development and Partnership Branch of People Services

- a Planning and Evaluation Officer, Strategic and Business Planning in the Innovation Development and Partnership Branch of People Services

- the Program Manager, Operational Support with the Employment and Financial Assistance Branch of People Services

- a Research Assistant, Operational Support with the Employment and Financial Assistance Branch of People Services

- a Policy, Planning and Evaluation Officer, Operational Support with the Employment and Financial Assistance Branch of People Services

- a System Analyst, Corporate Services, Information Technology Services

The City submits that during this meeting the staff reviewed spreadsheets taken from the database containing all of the data elements and discussed the information that the appellant was seeking. The staff also consulted a developer to determine how much time it would take to create the program to extract the information in the format requested by the appellant.

Following these discussions the City produced the following chart, which outlines for each of the 13 items of information requested by the appellant the details regarding the calculation of fees and the total to be charged for each item:

	Requested Information	Status	Fee Breakdown	Total $
1.	Three lists of past, present and future organizations of the Program	Query, there are no future organizations. Search time required to determine which names of the organizations can be released (more than 5 employees and/or volunteers)	1 hour computer programming time to produce list Search time 262 organizations – 50 organizations due to familiarity = 212 organizations @ 7 minutes per organization	60.00 390.00
2.	A list of participating organizations with three or five more placements active	Developer required to write program	5 hours computer programming	300.00
3.	Three lists of participating organizations with participants working for a total of 140 hours/month, 280 hours/month and 420 hours/month	Developer required to write program. Some organizations are not specific to the total	5 hours computer programming	300.00

4.	A list of participating organizations whose individual placements signed "consent to promote" waivers	262 organizations	262 files to search through for consent @ 5 minutes per file = 21.83 hours	655.00
5.	The number of active individual participants	Canned information	5 minutes search	2.50
6.	The number of individual participants to date	Canned information	5 minutes search	2.50
7.	The number of former individual participants	Canned information	5 minutes search	2.50
8.	The number of individual participants who agreed to participate but who are not in a placement now	Query	2 hours computer programming time	120.00
9.	The number of all organizations who indicated their willingness to participate in the Program	Repeat of # 1		0.00
10.	The number of individual participants who are required to participate in the Program	None. It is strictly a voluntary program		0.00
11.	The number of individuals who volunteered to participate in the Program	100 percent since it is a voluntary program		0.00
12.	The number of individual participants who self-initiated their own placements	CP2 report	1 hour computer programming time	60.00
13.	A list of the types of work done by community placements	Produce listing and review listing to determine if disclosure is an invasion of privacy	15 minutes computer programming time 1.5 hours preparation time to sever position titles	7.50 45.00
			Total	**1,945.00**

The City states that the chart sets out "[t]he manual actions necessary to locate the records, steps taken to locate the records, actual amount of time involved in each manual action taken to locate and prepare the records for disclosure and any other costs associated with processing the request."

As indicated above, the appellant has confirmed that he only contests the fee estimates for items 1, 2, 3, 4 and 8. The total fee estimate for these items is $1,825.00.

The City points out that the bulk of the costs associated with this request are search costs, not preparation costs. Recognizing that the fee estimate is large, the City states that it is not charging the appellant for preparation costs, such as photocopying.

With regard to the computer programming charges, the City states that it has provided an estimate based on the assistance of a programmer who already has familiarity with the database despite the fact that the person who will do the programming will require time to become familiar with it. The City indicates that the original creator of the database is no longer with the City, which accounts for why the new programmer will require time to become familiar with the database. Therefore, the City asserts that the actual programming charges will exceed the estimate. However, the City states that, in an effort to be fair to the appellant, it has chosen not to pass this additional cost on to him.

Appellant's representations

The appellant states that when he made the 2000 request for almost identical information he was readily supplied with the information for $101.50. He also contends that the City "...already has this information readily available…" and that any costs associated with reviewing the agencies participating in the Program "…should be minimal or non-existent".

The appellant states that the City has an obligation to ensure that its use of technology "does not remove or make inaccessible information from the public domain." The appellant objects to the City's explanation that the information is not readily available because it is not required to report the information. The appellant states there has been a "demonstrated and consistent interest in this information by citizens […] and citizen's groups…" Given the level of interest, the appellant believes that the City "…should seek to facilitate responding to these regular requests for information, rather than blame the inaccessibility of its Oracle database and the high costs of programming queries required to provide access to this information." Further, the appellant states that "[c]itizens should not be punished by exorbitant fees for this oversight and inability to understand the reality of the public climate around the [Program]."

The appellant takes issue with the City's process of determining the fee estimate. The appellant comments that the staff time devoted to determining the cost of providing this information seems excessive for a city with "strained departmental resources, budget cutbacks and increased provincial downloads". Coupled with "inconsistent fee estimates" and an "apparent unwillingness to settle the matter in mediation", the appellant states that the City's "primary concern is not to recover its costs, but to make inaccessible this information."

The appellant refers to Order 4 and Order M-1083 as precedents for the exclusion of the "costs of decision-making, printing, use of material/equipment to generate records, photocopying time, and the time for the assembly of information from fees issued to requesters of information" from the calculation of a fee estimate. He asserts that these orders are relevant to the circumstances of this appeal.

Commenting on the City's two proposed methods of retrieval - sql or a field search - the appellant points out that the City's chart does not specify the method to be used nor does it explain the difference in time between the two methods. The appellant acknowledges that "[a]n sql could require programming […] although there are plenty of existing programs that could be readily adapted by a skilled programmer. According to the appellant a "field search should be easy and quick to do and would fall into the category of processing information rather than programming…"

Regarding the City's claim that the bulk of the costs associated with the request are search costs, not preparation costs, the appellant asserts that "search costs are precisely what a database are supposed to reduce."

The appellant finds the advice the City has received regarding programming costs questionable. He finds the City's claim that it has reduced its actual programming costs and charged the appellant less to account for having to hire a programmer who is unfamiliar with the Oracle program baseless. He asserts that the reason for the variance in fee estimates from the original amount of $1,690.00 to $1,945.00 is not attributable to the range of information requested but to the "inability of the City's human resources department to retain its original Oracle database developer." In the appellant's view, "a professional would have provided one estimate and stood by it. The loss of trained and expert staff […] should not result in the attribution of exorbitant fees to a requester of information."

The appellant states that "[t]he range of difference between the fee estimates, [coupled with the City's] admission of not having consulted an expert database developer knowledgeable of [its] system, discredit[s] the City's fee estimates."

City's reply representations

The City submitted detailed reply submissions that address a number of issues, including:

- the difference between the fee for the 2000 request and the fee estimate for the 2002 request
- the City's consultation with appropriate staff to determine a reasonable fee estimate
- the impact of a change in technology from Access to Oracle

Differences in fees between the 2000 and 2002 requests

The City indicates that the difference in the fee estimates is attributable to an error made in calculating the fee for the 2000 request, the increased breadth of the 2002 request, and the change in technology from Access to Oracle.

In 2000, the appellant was charged $101.50. However, the City states that the appellant should have been charged the sum of $457.20. The City has provided an affidavit from its Freedom of Information Co-ordinator (the Co-ordinator). The affidavit reviews the circumstances surrounding the 2000 request fee estimate and the processing of the 2002 fee request estimate. The Co-ordinator also comments on the consultation process the City engaged in with appropriate staff to arrive at the fee estimate for the 2002 request.

The Co-ordinator states in her affidavit that upon realizing that the estimate for the 2002 request was significantly higher than the fee estimate given in 2000, she reviewed the file carefully to determine what accounted for the difference in estimates. She indicates that at the time of the 2000 request another person was acting for her as the Co-ordinator. In a letter to the appellant dated March 8, 2000, the appellant was given an estimate of three hours of search time at a rate of $7.50 per 15 minutes for a total of $90.00. However, a statement of account sent to the appellant, dated April 28, 2000, showed that 15 hours of search time were actually needed to process the request. Despite the increase in search time, the appellant was still only charged $90.00. The Co-ordinator states that the appellant should have been charged $457.20, comprised of $450.00 search time and $7.20 for photocopying charges.

The City states that "there are more Community Placements than there were in 2000". The City indicates that there were "192 Community Placements at the time of the 2000 request, 262 at the time of the 2002 request, and over 300 now." As well, the City states that it is also "obligated by Order MO-1415 to verify each organization's number of volunteers to protect the privacy of individuals (212 organizations at 7 minutes per organizations)." This verification process relates to item 1 of the appellant's request for an estimated fee of $390.00. The City also notes that there were no "consent to promote" records [item 4] in the 2000 database and so there were no responsive records and no charges for this item. The Co-ordinator, in her affidavit, indicates that the cost associated with processing the "consent to promote" waivers in the 2002 request has been estimated at $655.00, comprised of searching through 262 files at 5 minutes per file for a total of 21.83 hours of search time. The City submits that the tasks involved in responding to items 1 and 4 of the appellant's request account for $1,045.00 of the total estimate. Neither of these tasks were performed or charged for in the 2000 request.

Consultation with appropriate staff

The City submits that "it has consulted a Systems Analyst who is very familiar with the Oracle database..." as well as other City staff to determine the fee estimate. In support of its position, the City relies upon the affidavits of the Co-ordinator and the City's Program Manager, Business Applications Management, Information Technology Services (the Program Manager).

The Co-ordinator indicates that she met, on two occasions, with the City staff who would be responsible for completing the work set out in the estimate and reviewed in detail the time it would take to search for and prepare the records. After the first meeting the City produced the chart (set out above), which sets out the fees estimated for each item requested by the appellant for a total of $1,945.00. The Co-ordinator states that after reviewing the appellant's representations in this appeal, she convened a second staff meeting to confirm the fee estimate.

Present at this meeting were the staff that attended the first meeting along with the Program Manager. She indicates that the staff stood by their numbers as reasonable estimates. She feels that staff will have to spend much more time processing the request than can be recovered under the *Act*. Staff have informed her that it will take upwards of two weeks of staff time to process and verify the request. She submits that the City has done everything possible to provide the appellant with a reasonable fee estimate.

The Business Manager confirms in his affidavit that he is "very familiar with the Oracle database and the programming required to write code to develop a report to get at this information." He submits that he attended the second meeting and cautioned that "the information requested could be found in any combination of the one thousand fields in [the] database." He also advised at this meeting that "[u]sing a field search cannot easily retrieve [the information]…[and that as a result] a [Systems Analyst] would have to write code to develop a report to get at this information." The Program Manager attests to the qualifications of a named Systems Analyst, who is the individual directly involved in the programming component of the fee estimate. This Systems Analyst reports directly to the Program Manager. The Program Manager understands that the Systems Analyst attended the first staff meeting and he can attest to this person's attendance at the second meeting. He states that he has "personally reviewed" the Systems Analyst's time estimate for computer programming and he is "quite comfortable that the estimates given are realistic."

Impact of a change in technology

The City makes the following submissions regarding the switch from Access to Oracle :

> The information was stored in Access in February 2000. At that time, the Region stored the Community Placement, Employment Resource Centre and the Employment Placement separately in three Access programs. These stand-alone programs were acceptable for the Community Placement and other programs in their infancy, but a need was identified to make the databases more streamlined.
>
> . . . . .
>
> A consultant was hired to combine all three programs into one database, using Oracle to create the Employment Activities and Outcomes Database ("EAOD"). Staff can still interface with the database, but can only see what information is pertinent to their function, and not the entire content of the database. There is no longer a general querying capability for staff.
>
> The consultant wrote various computer programs to deliver fixed reports required legislatively or for operations management. This "canned" information is readily accessible and that is why the Appellant's requests number 5, 6 and 7 have a nominal cost associated with them.

> A developer is required to write new programs, reports and/or queries to retrieve the type of data requested in 1, 2, 3, 8 12 and 13 of the Appellant's request. The Appellant wants information that is not readily accessible, and that is why there is a high programming cost associated with [these items].

The City then reviews the steps that a computer programmer must follow to extract the information requested by the appellant from the Oracle database:

> [T]he EAOD application was designed to deliver fixed reports against the Oracle backend database. In order to capture the information that the Appellant wishes to receive, a computer programmer has to use an impromptu tool to develop reports and SQL to essentially "mine" requested data from the data model.
>
> The Appellant has suggested that the City simply use a field search to get at the information. Consultation with Information Technology has revealed that this is not the case.
>
> - The data model for the EAOD is complex.
> - Within the model, there are tables.
> - All the tables are related to each other in one way or another.
> - Within each table, there is a list of fields. These fields can be a name field, a phone number field, or some other field.
> - There are over one thousand fields contained in this database.

To illustrate the work involved for a programmer, the City provides a breakdown of the steps a programmer would follow to conduct a search for the information request in item 2 of the appellant's request:

> - Review the request and ensure the Systems Analyst knows what is being asked and confer with Business Analysts to ensure common understanding. **Non-chargeable.**
> - Analyze the request against the data model and determine what tables and fields need to be reported on to meet the requirements of the request. **Chargeable.**
> - Use impromptu and at times SQL or what ever reporting tool that best meets the needs for that type of information. This process can be quite complicated and include building new table relationships, outer joins, creating field variables etc. This needs to be done in a test/development area not against the production database in order to protect the production environment. **Chargeable.**
> - Test and debug impromptu, SQL or other tool. **Chargeable.**
> - Ensure that the program is returning correct information. **Chargeable.**

- Review and validate expected results with Business Analyst. **Non-chargeable.**
- Format the data into a printable report that presents the data into viewable form according to the paper size requested. **The City views this as a preparation fee but has not charged the Appellant.**
- Move the report into the production environment. **The City views this as a preparation fee but has not charged the Appellant.**
- Run the report. **Non-chargeable.**
- Print the results. **Non-chargeable.**

The City points out that the above process involves a considerable amount of non-chargeable time as well as time that could be charged but that the City has elected not to charge in an effort to reduce the cost to the appellant.

The City states that there are over "one thousand fields to search in EOAD, […] and to search through every one of them would make the fee estimate astronomical." The City states that by using programming tools, the programmer can "access fields in different tables and merge them." According to the City the programmer will have to "write programming language that will pull information from the database containing over a thousand fields." For example, the City states that "because the database contains information from three different programs, there could be ten fields containing the word 'address'." The programmer will have to "test and debug the programming language and verify the data received."

The City submits that it has consulted information technology experts to find the most economical way to provide this information to the appellant and they have recommended the methodology provided above.

Findings

The City has demonstrated through its representations and supporting affidavit evidence that it has taken the appellant's request seriously and relied upon appropriate expertise to determine a reasonable estimate for the processing of his request. I find the 2000 and 2002 requests distinguishable. I accept the City's explanation that an error was made in the calculation of the fee for the 2000 request. Clearly, the fee for this request should have been considerably higher based on the hours of search time actually invested by the Region. However, the key differences in the two fee estimates are attributable to the expanded scope of the search in 2002 and the change in database technology.

The estimated search costs associated with items 1 and 4 of the appellant's 2002 request amount to $1,045.00. Of this amount, $390.00 is attributable to a verification process to ensure that the personal privacy of volunteers is protected. The balance of $655.00 relates to the search for "consent to promote" records. I accept the City's submission that these tasks were not performed or charged in the processing of the 2000 request.

Regarding the change from Access to Oracle and its impact on the size of the fee estimate, the City has submitted that the change was made to "streamline" information stored by the City for the Program and to improve the City's ability to deliver fixed, or "canned", reports required legislatively or for operations management. The City's fee estimate for programming in respect of items 1, 2 and 3 is $780.00. I acknowledge the appellant's concern that citizens and citizens' groups should not be punished with exorbitant fees for their interest in this information. However, in my view, this is neither the City's intent nor the effect of the new technology. The City appears prepared to provide some of the information requested (i.e. the canned information) at a nominal cost. The City has demonstrated that in order to retrieve the balance of the information, significant search and/or programming time is required. This situation may not be optimal and perhaps the City could do more in the future to make this information accessible at a lower cost. But, this concern is not relevant to my consideration of whether the City's fee is in accordance with the *Act* and regulations. I am convinced that the City's estimate is based on a thorough and good faith consideration of the steps reasonably necessary to respond to the request, and I find that it is in compliance with the *Act* and regulations.

FEE WAIVER

Introduction

Section 45(4) requires an institution to waive fees, in whole or in part, in certain circumstances. Section 8 of Regulation 823 sets out additional matters for a head to consider in deciding whether to waive a fee. Those provisions state:

> 45. (4) A head shall waive the payment of all or any part of an amount required to be paid under subsection (1) if, in the head's opinion, it is fair and equitable to do so after considering:
>
> (a) the extent to which the actual cost of processing, collecting and copying the record varies from the amount of the payment required by subsection (1);
>
> (b) whether the payment will cause a financial hardship for the person requesting the record;
>
> (c) whether dissemination of the record will benefit public health or safety; and
>
> (d) any other matter prescribed by the regulations.
>
> 8. The following are prescribed as matters for a head to consider in deciding whether to waive all or part of a payment required to be made under the Act:
>
> 1. Whether the person requesting access to the record is given access to it.

2. If the amount of a payment would be $5 or less, whether the amount of the payment is too small to justify requiring payment.

This office may review the institution's decision to deny a request for a fee waiver, in whole or in part, and may uphold or modify the institution's decision [Orders M-914, P-474, P-1393, PO-1953-F].

Part 1: basis for fee waiver

Introduction

The appellant takes the position that he is entitled to a fee waiver on the grounds of financial hardship (section 45(4)(b)) and public health and safety (section 45(4)(c)).

Section 45(4)(b): financial hardship

Generally, to meet the "financial hardship" test, a requester should provide details regarding his or her financial situation, including information about income, expenses, assets and liabilities [see, for example, Order P-1393].

In this case, the appellant has provided sufficiently detailed financial information. However, based on this information, I am not satisfied that the fee will cause him financial hardship. While I recognize that the fee is substantial, that fact alone is not sufficient to trigger the application of section 45(4)(b) [see Order P-1402]. Without repeating all of the figures here, the appellant receives a relatively substantial income, which exceeds his expenses to a reasonable degree. In addition, the information about his assets and liabilities does not sway me towards a finding of financial hardship.

In the circumstances, I accept the City's submission that waiving the fee would "shift an unreasonable burden of the cost of access from the appellant to the City." Therefore, I find the appellant does not qualify for a fee waiver under section 45(4)(b).

Section 45(4)(c): public health or safety

This office has found that dissemination of the record will benefit public health or safety under section 45(4)(c) where, for example, the records relate to:

- compliance with air and water discharge standards [Order PO-1909]
- a proposed landfill site [Order M-408]
- a certificate of approval to discharge air emissions into the natural environment at a specified location [Order PO-1688]

- environmental concerns associated with the issue of extending cottage leases in provincial parks [Order PO-1953-I]

- safety of nuclear generating stations [Orders P-1190, PO-1805]

- quality of care and service at group homes [Order PO-1962]

The appellant states that he is a writer and that he intends "to write about the [Program], publish it in electronic or print media and contribute to the public debate on [these programs] in Ottawa, Ontario and Canada." He states that acquiring this information is "a vital component" of his research so that he "can compare the former regional municipality and the amalgamated City." He feels that the City's fee estimate is a "prohibitive barrier that restricts the public's right of access to this information."

The City states that it "does not believe that [the appellant's request] will benefit public health or safety." The City submits that the requested information is needed only for the appellant's research purposes and not for any public purpose.

The City makes the following further submissions in reply to the appellant's representations:

> [The Information and Privacy Commissioner/Ontario (IPC)] has repeatedly held that s.45(4) is an exhaustive list of the matters to be considered if a waiver is appropriate. The "public interest" is not one of the factors to be considered (Orders #5, 6,10, 31, 43, 55, 81,111, P-700).
>
> The Appellant has made no connection between the public interest and the public health and/or safety. It is not sufficient that there may be a "public interest" in the records or that the public has the "right to know". The IPC has found that there must be some connection between the public interest and a public health and safety issue in order to grant a fee waiver. ([Order Mo-1336])

I concur with the City's interpretation of the "public health or safety" factor under section 45(4) of the *Act*. The appellant has indicated that he intends to write about the Program and contribute to the public debate about these types of programs throughout Ontario and Canada. The appellant appears to assert that there is a public interest in the dissemination of the records to facilitate this debate. In Order P-474, former Assistant Commissioner Glasberg stated that in order to meet the requirements of this factor, the subject matter of the records must relate *directly* to a public health or safety issue. In Order MO-1336 Adjudicator Laurel Cropley built on the former Assistant Commissioner's analysis. She stated that it is not sufficient that there only be a "public interest" in the records or that the public has a "right to know." There must be some *connection* between the public interest and a public health and safety issue. In this case, it is conceivable that there may be a "public interest" in the records that the appellant seeks. However, he has not established in his evidence any *connection*, direct or otherwise, between this suggested public interest and a public "health" or "safety" issue.

Accordingly, I find that the fees should not be waived on the basis of "public health or safety".

Conclusion

I conclude that the appellant has not established either of the fee waiver grounds under section 45(4)(b) or (c). In the circumstances, it is not necessary for me to consider the "fair and equitable" test under section 45(4).

ORDER:

1. I uphold the City's fee estimate for items 1, 2, 3, 4 and 8 of the appellant's request, in the amount of $1,825.00.

2. I uphold the City's decision to deny the appellant's request for a fee waiver.

Original signed by: November 28, 2003
Bernard Morrow
Adjudicator