



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1821

Appeal MA-030336-1

City of Waterloo



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NATURE OF THE APPEAL:

Under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), the requester asked the City of Waterloo (the City) for all correspondence, including letters and e-mail, from persons who commented on, complained about, or made suggestions pertaining to:

- the height and density policy study final report;
- the height and density policy study response paper; and
- the height and density policy discussion paper.

The City responded by providing an interim decision respecting access to the requested information and a fee estimate for processing the request. The City estimated the fee in the amount of \$1430. It also noted that any personal information in the records would be severed pursuant to the invasion of privacy exemption in section 14(1) of the *Act*.

The requester asked the City to waive the fee, which the City declined to do.

The requester (now the appellant) appealed the City's refusal to waive the fee. The appellant also appealed the amount of the fee itself.

The parties were unable to resolve any of the outstanding issues during mediation, and the appeal moved to the adjudication stage of the process.

The Adjudicator initially sought and received representations from the City, which were shared, in their entirety, with the appellant. Representations were also submitted by the appellant and shared, in their entirety, with the City who then made additional submissions by way of reply.

DISCUSSION:

FEE ESTIMATE

The purpose of a fee estimate is to give the requester sufficient information to make an informed decision on whether or not to pay the fee and pursue access [Orders P-81, MO-1367, MO-1479, MO-1614, MO-1699].

In all cases, the institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated [Order P-81, MO-1614].

This office may review an institution's fee and determine whether it complies with the fee provisions in the *Act* and Regulation 460, as set out below.

Section 45(1) requires an institution to charge fees for requests under the *Act*. That section reads:

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.

More specific provisions regarding fees are found in sections 6, 6.1, 7 and 9 of Regulation 823. Section 6 reads:

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:

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.

The City's revised fee estimate was broken down as follows:

- \$100.00 for photocopying of 500 pages at \$.20 per page; and
- \$499.80 (16.66 hours or 1000 minutes at \$30 per hour) for editing out the personal information contained in the responsive records, which were already “organized”.

The appellant does not dispute the amount charged for photocopying but argues that there should not be any editing costs since “the documents are part of the public record as they were solicited as part of public consultations”. In my view, this argument has no bearing on whether the City can charge fees to make the required severances.

Previous orders of the Commissioner’s office have addressed the appropriate method of calculating a reasonable amount of a fee for the preparation of a record where certain portions may need to be severed prior to its disclosure. In Order MO-1421, Adjudicator Laurel Cropley held that:

Although this amount of time [two minutes per page] has generally been recognized as the appropriate standard in most cases, the circumstances of each case must be considered in determining whether it is appropriate in any given situation. The amount of time required to sever a page of a record is generally based on a variety of considerations, such as the nature of the record, the amount of information on the page, and the nature and amount of information to be severed, for example whole paragraphs as opposed to many interspersed words.

In the present appeal, given the fact that the records may contain a great deal of personal information that will require severing, I am prepared to accept the two-minute per page standard as the appropriate rule of thumb for calculating the time required to “prepare the records for disclosure” in this case. As a result, I uphold the City’s calculation of \$499.80 for this work, comprising a fee for two minutes to sever each of 500 pages of records. In summary, I uphold the City’s fee estimate in its entirety.

FEE WAIVER

Section 45(4) of the *Act* 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.

A requester must first ask the institution for a fee waiver, and provide detailed information to support the request, before this office will consider whether a fee waiver should be granted. 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].

The appellant submits that he is a full-time student and has no employment income. He also indicates that he has received some of the requested information from the City through other means. Finally, the appellant suggests that the dissemination of the records through the Waterloo Community Council, "a coalition of community associations", will benefit public health or safety.

The City initially declined to grant the appellant a fee waiver as he had not provided any evidence that would suggest that it was fair and equitable to waive the fee in this case. In its reply representations, the City points out that the appellant "has presented no evidence to substantiate his opinion that the release of the records will benefit public health or safety" and that the "requested correspondence deals with zoning issues".

In my view, the appellant has failed to provide the City with the type of detailed information required to support his request for a fee waiver. I note that the appellant did not provide the City with any more than the most cursory information about his current financial status. As a result, I find that he failed to meet the onus of proving that paying the requested fee would cause him financial hardship.

In addition, I find that the appellant has not provided sufficient evidence to support his contention that the dissemination of the record will benefit public safety or health in some tangible way. In my view, the appellant has not made the necessary evidentiary link between the

dissemination of the information in these particular records and a benefit to public health or safety. Accordingly, I find that the appellant has not provided me with sufficiently detailed evidence to warrant a decision that it is fair and equitable for the City to waive the fees charged in this appeal.

ORDER:

I uphold the City's fee estimate and its decision not to grant the appellant a fee waiver.

Original Signed By: _____
Donald Hale
Adjudicator

_____ August 27, 2004