



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1977

Appeal MA-040125-2

Toronto Police Services Board



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NATURE OF THE APPEAL:

The Toronto Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The requester sought access to “all expense records”, including any “monthly expense summaries” and “the accompanying background receipts” submitted by the Chief of Police from January 1, 2000 to the date of the request, a period of over four years. The requester later amended her request to include only records covering three years of expenses.

The Police issued an interim decision in which they addressed both the original and the amended requests. They also issued a fee estimate in the amount of \$12,600 to cover the cost of four years of records and \$9,450 for three years of expense records and requested a deposit of 50% of these amounts as a down payment. In addition, the Police issued a time extension decision under section 20(1) of the *Act* stating that a time extension of 112 days is required to complete the search for four years of records and a time extension of 91 days is required to search for three years worth of records. Finally, the Police indicated that some of the requested information may be subject to the discretionary exemption in section 11(d) of the *Act* (economic interests of an institution).

The first appeal – MA-040125-1

The requester, now the appellant, appealed the decision of the Police to charge a fee and extend the time required to respond to the request and this office opened Appeal Number MA-040125-1. The appellant also requested a fee waiver, which was denied by the Police. During the mediation of that appeal, the appellant withdrew her request for “monthly summaries”, limiting the scope of her request to include only the expense claims and background information for a three year period.

Mediation did not resolve that appeal and it was then transferred to the inquiry stage of the process and assigned to me for adjudication. Following the receipt of representations from the parties, I addressed the issues raised in that appeal in Order MO-1869.

In my decision in Order MO-1869, I adopted the approach taken by former Assistant Commissioner Mitchinson in Order MO-1614 and ordered the Police to undertake the following actions:

1. I order the Police to provide the appellant with an interim access decision and a fee estimate following the completion of their review of a representative sampling from the identified 120 boxes of financial records by **December 2, 2004**.
2. I also order the Police to conduct a search of the record-holdings of the Office of the Chief of Police and the electronic accounting records which they maintain and provide the appellant with an interim access decision and fee estimate, in accordance with the provisions of sections 19, 21 and 22 of the *Act*, by **December 22, 2004**.

In Order MO-1869, I did not make a determination as to the appropriateness of the fee estimate provided by the Police to the appellant and declined to address the appellant's request for a fee waiver as the Police had not yet made a final decision on whether to do so. I also required the Police to provide me with copies of the letters referred to in the order provisions. In response to Order MO-1869, the Police advised me that a complete search of the record-holdings of its Financial Management Office referred to in Order Provision 1 had already been undertaken. Accordingly, I advised the Police that it was unnecessary to undertake a review of a representative sampling of those 120 boxes of records. In a decision letter dated December 22, 2004, the Police provided the appellant with a fee estimate of \$ 6,958.30 for the records located in the Financial Management Office.

The Police also advised that they had undertaken a review of a representative sampling for one year's records in the Office of the Chief, and issued a fee estimate for responsive records in the amount of \$2,315.80. The interim decisions issued for both sets of records note that the exemptions in sections 11(d) (economic or other interests of an institution), 13 (danger to safety or health) and 14(1) (invasion of privacy) may apply to some of the information contained therein.

The appellant appealed both of these decisions and sought a waiver of the fees under section 45(4) of the *Act*. The current appeal file was then opened as Appeal Number MA-040125-2.

During mediation, the appellant agreed not to pursue the fee waiver aspect of her appeal. The appellant also agreed not to appeal that portion of the fee which comprised photocopying charges. Further mediation was not possible and the matter was moved into the adjudication stage of the appeals process. I sought and received representations from the Police, initially, and shared them, in their entirety, with the appellant. I also received representations from the appellant and shared them with the Police, who then provided me with reply submissions.

DISCUSSION:

FEE ESTIMATE

General principles

Where the fee is \$100 or more, the fee estimate may be based on either

- the actual work done by the institution to respond to the request, or
- a review of a representative sample of the records and/or the advice of an individual who is familiar with the type and content of the records. [MO-1699]

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]. The fee estimate also assists requesters to decide whether to narrow the

scope of a request in order to reduce the fees [Order MO-1520-I]. 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) of the *Act* 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 for requests involving general records are found in sections 6, 7 and 9 of Regulation 823. Those sections read:

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.
7. (1) If a head gives a person an estimate of an amount payable under the Act and the estimate is \$100 or more, the head may require the person to pay a deposit equal to 50 per cent of the estimate before the head takes any further steps to respond to the request.

(2) A head shall refund any amount paid under Subsection (1) that is subsequently waived.
9. If a person is required to pay a fee for access to a record, the head may require the person to do so before giving the person access to the record.

Representations of the parties

In her representations, the appellant indicates that she is seeking access to the records that have been located as a result of the searches undertaken by the Financial Management Office as opposed to those found in the Office of the Chief of Police, which the Police indicate may not be complete. As a result, the fee estimate provided with respect to the record-holdings of the Office of the Chief of Police is no longer the subject of this appeal.

With respect to the records located in the Office of Financial Management, the Police indicate that, without being requested to do so by the Freedom of Information Office, experienced Financial Management staff conducted a search of its record-holdings for the requested information. The Police indicate that over a nine-day period, four staff members spent 180 hours to locate the appropriate accounts payable records while 35 hours were spent locating potentially responsive accounts receivable records. It submits that this amount of time represents the actual number of hours required to complete the required search for responsive records. The total cost for the performance of this part of the Police response to the request is \$6450.00, calculated as 215 hours times \$30 per hour.

The Police further indicate that an additional 5.5 hours will be required to “cross-reference accounts payable records with accounts receivable records submitted for reimbursement to verify whether the records are responsive to the request (i.e. expense records of the Chief of Police).” The Police took 33 minutes to perform this cross-referencing exercise on a representative sample of ten per cent of the responsive records. Accordingly, the Police argue that 330 minutes, or 5.5 hours, are required to complete this work, at a cost of \$165.00.

Finally, the Police advise that there are 554 pages of responsive records, some of which may require severing as they may contain information that is exempt from disclosure under one of the

exemptions in the *Act*. The Police advise that, from a representative sampling of 66 pages of responsive records, 27 required no severing, 21 required minimal severing while 18 pages required more extensive severing. Based on a calculation of 1 minute per page for those requiring minimal severing and 2 minutes per page for those requiring more extensive severing, the Police calculated the time required to prepare the records to be 7.75 hours for a cost of \$232.50.

Accordingly, the fee estimate provided by the Police can be broken down as follows:

- search fee of \$6,615.00
- photocopying charges of \$110.80 (which is not in dispute)
- preparation fee of \$232.50

for a total of \$6,958.30.

The appellant takes the position that:

. . . the estimated search fee of more than \$6000 for the documents assembled by the financial management office is still too high and clearly unfair considering the search was done unbeknownst to me. The Toronto Police Service has not clearly stated why this work needs to be duplicated. Most of the heavy-lifting has been done, thus, I'm troubled that the search fee is so high.

Findings

I disagree with the appellant's position that because the work involved in searching for the responsive records has already been done by the Office of Financial Management, it is not necessary that it be undertaken again and she need not pay a fee for it. In fact, the fee being charged by the Police represents the reimbursement for the searches which the Police have largely already performed in response to the appellant's request. I also disagree with the appellant's contention that the fee is "clearly unfair". In my view, because the actual search has been completed it would lead to a more accurate fee than an estimate based on a representative sample. In the normal course, an institution would not have undertaken a complete search prior to receiving the fifty per cent down payment allowed for under the procedure set out in section 45 and clarified in Order 81. However, in the present case, the Police did not follow this course of action. The Police actually conducted the bulk of the search for responsive records and are seeking to have the Commissioner's office uphold the quantum of the fee that was communicated to the appellant in its decision letter of December 2, 2004.

The Police have provided me with a detailed and extensive explanation of the manner in which they calculated the fees applicable to this appeal. In my view, the fact that the Police actually did the work required to complete the majority of the search strengthens the argument that the search time expended was reasonable. The remaining portion of the fee is calculated based on a representative sample. In the present case, the Police can state with precision the amount of time

required to locate the responsive records. As a result, I uphold the fee with respect to the 215 hours of search time required to locate the requested information. In my view, the Police have provided me with sufficient evidence to justify the reasonableness of this amount of time.

I do not, however, agree with the additional charge by the Police of \$165.00 for 5.5 hours to cover the time required to have one of its analysts "cross-reference accounts payable records with accounts receivable records submitted for reimbursement to verify whether the records are responsive to the request (i.e. expense records of the Chief of Police)." I am not convinced, based on the representations provided by the Police that this step is either required or necessary for the processing of the request. Presumably, the 215 hours of search time described above would adequately cover the time required to locate the responsive records and determine which of them contain responsive information. Based on the information provided to me, I find that any additional time spent by the staff of the Police Freedom of Information office would simply duplicate these earlier efforts by staff of the Financial Management office. As a result, I disallow the claim by the Police for this amount.

I find that the calculation made by the Police to cover the time spent preparing the records for disclosure, 7.75 hours for a total of \$232.50, is in accordance with the fee provisions in the *Act* and the Regulations, as well as past jurisprudence of this office. I will, accordingly, uphold the amount of this portion of the fee.

By way of summary, I find that the Police have provided me with adequate evidence to uphold:

1. the fees charged for search time of 215 hours, for a total of \$6450.00;
2. the fees charged for time required for the preparation of the records of 7.75 hours or \$232.50; and
3. photocopying charges of \$110.80.

As a result, I uphold a total fee of \$6793.30.

ORDER:

I uphold the decision of the Police to charge a fee of \$6793.30.

Original signed by: _____
Donald Hale
Adjudicator

October 4, 2005

POST SCRIPT:

I wish to comment upon several additional matters that pertain to the processing of this request by the Police. In a lengthy postscript to Order M-583, dated August 18, 1995, former Commissioner Tom Wright commented on the policy considerations behind the disclosure of information about the expense claims submitted by public servants. He commented, in part, that:

In his representations, the appellant states that taxpayers should have the right to scrutinize the employment-related expenditures of school trustees. I agree.

The appellant asserts that, by charging fees to obtain such information, school boards are frustrating this legitimate objective.

It is also the appellant's view that information relating to school board expenditures (and to payments made to trustees in particular) should be readily accessible. He submits that, where a school board's records management system is not organized in a way which permits information to be provided inexpensively, the board, and not the requester, should bear the costs associated with disclosing the information.

Previous orders made by this office have recognized that the *Act* contemplates a user pay principle for providing access to general records. Other orders have held that government organizations are not obliged to maintain records in such a manner as to accommodate the various ways in which a request for information might be framed.

I believe, however, that these principles must be applied flexibly, taking into account the nature of the information being sought and how frequently requests of a particular type are received.

This viewpoint was effectively expressed by Assistant Commissioner Irwin Glasberg in Order M-372 where he commented on the increasing public demand for information on the expenses incurred by government officials. The Assistant Commissioner said:

... [T]he Board should be aware that government organizations across the province are now regularly receiving access requests regarding the expense accounts of senior officials. This is part of a trend where members of the public are seeking to hold institutions of all types more accountable for the expenditure of tax dollars. That being the case, I would strongly encourage the Board to reassess the manner in which it maintains its expenditure related

records so that these documents can be retrieved more easily and at a minimal cost to requesters.

I share this view, but would take it one step further. I believe it's time for all government organizations to make expenditure-related information routinely available to the public. Such information should include the expenses incurred by senior officials for which they will be reimbursed by the organization. In my view, this "routinely available" approach has equal application to all general records held by government.

For some government organizations a move in this direction will mean rethinking the way in which they maintain expenditure and expense-related information and other general records. I see this as a positive step and one which has advantages for both government organizations and the public.

The former Commissioner went on to add that:

I believe that the routine disclosure of various types of government-held information will assist government organizations to respond to requests for information more effectively, more efficiently and at significantly less cost. Or to say it in plain words, routine disclosure makes access to information better, faster and cheaper.

In my view, these comments apply equally to the circumstances of this appeal. The appellant, representing a media outlet, is seeking access to information relating directly to the manner in which public funds have been expended; specifically, relating to certain expenses incurred by a senior official with the Police. Unfortunately, the manner in which the Police maintain the records containing this information has made it extremely difficult and expensive to retrieve. I would strongly encourage the Police to consider instituting a more accessible system of record-keeping for information relating to the expenditure of expense account information by its members and employees, in accordance with the suggestions made by former Commissioner Wright over ten years ago.