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

ORDER MO-2071

Appeal MA-050005-1

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*) for access to the following records:

(1) Records, such as documents from the Case Tracking System and Records of Arrest (TPS Forms 100, 101, CIPS 101 etc.) listing all of the cases by name/title of proceedings (for e.g. The Queen v. Jones) investigated and processed by the Toronto Police Service's ("TPS") Hold-Up Squad ("HUS") between 1984 and 2004 (CASES INVOLVING YOUTH UNDER 18 BEING IDENTIFIED BY INITIALS ONLY)

(2) Records showing the total number of cases processed by the TPS' Hold-Up Squad between 1994 and 2004

(3) Records showing from which area of the City of Toronto, by police division (e.g. 42, 33, 12, etc.), each named case investigated and processed by the TPS' Hold-Up Squad between 1994 and 2004 originated

(4) Records, such as documents made from the Case Tracking System, showing the final disposition, final disposition date and court house location for each named case investigated and processed by the TPS' Hold-Up Squad between 1994 and 2004.

The Police issued an interim decision and fee estimate following a review of a random sample of the responsive records. Based on their review, the Police estimated that the fee for the time required to perform the necessary computer programming adaptations and a subsequent manual search of relevant cases in the database for the information responsive to the request would amount to $14,715.00. The Police advised the requester that, based on their review of the random sample of records, sections 8(1)(a) (law enforcement), 8(1)(f) (right to a fair trial), and 14(1) (invasion of privacy) read in conjunction with the presumption in section 14(3)(b) (investigation into a possible violation of law) of the *Act* would apply to exempt all or part of the records. The Police also advised the requester that with respect to Item 2 of his request, information for the years 1994 to 1996 could not be retrieved due to technical issues.

The requester, now the appellant, appealed the Police's decision. As the decision of the Police is an interim decision, based on a representative sample of records, the issue under appeal is whether the fee estimate should be upheld.

During mediation the Police advised that they would not reduce the estimated fee. The appellant advised the mediator that he would be submitting a formal request for a fee waiver to the Police.

As further mediation was not possible, the file was transferred to me for adjudication.

At the time the file reached the adjudication stage, this office had yet to receive any documentation from either the appellant or the Police to indicate that a fee waiver request had been submitted. In order for this office to review an institution's decision on a request for a fee waiver, a requester must first ask the institution for a fee waiver, providing detailed information

to support the request before this office will consider whether a fee waiver should be granted. This office may review an 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]. Accordingly, in the Notice of Inquiry I advised both parties that if a fee waiver request was submitted and subsequently denied, the parties were asked to provide me with the proper documents including the fee waiver request and the Police's response to that request.

I began my Inquiry into this appeal by sending a Notice of Inquiry to the Police, initially. I received representations in return. I then sent a copy of the Notice of Inquiry and a copy of the representations submitted by the Police, to the appellant, inviting representations. The appellant provided representations in response.

Along with his representations, the appellant enclosed a copy of a fee waiver request sent to the Police several days prior to the submission of representations. I then invited the Police to submit reply representations, which they did. The Police did not address the fee waiver request in their representations, but I subsequently received their letter to the appellant advising him of their denial of his fee waiver request.

As I had not originally sought representations from the appellant on the issue of fee waiver, I did so by way of a Supplementary Notice of Inquiry. The appellant did not provide representations in response.

DISCUSSION:

FEE

General principles

An institution is authorized to charge fees for processing requests pursuant to section 45(1) of 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 section 6 of Regulation 823 (as amended by O. Reg 22/96). This provision states:

> 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.

Where the fee exceeds $25, the institution must provide the requester with a fee estimate. Section 7 of Regulation 823 states that, where the fee is $100 or more, the institution may require the requester to pay a deposit equal to 50% of the fee estimate before the institution takes any further steps to process the appeal.

A fee estimate of $100 or more must 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.

[Orders P-81, 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 can assist a requester to decide whether to narrow the scope of a request in order to reduce the fees [Order MO-1520-I]. A fee estimate also protects an institution from expending undue time and resources on processing a request that may ultimately be abandoned [Order 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 estimate and determine whether it complies with the fee provisions in the *Act* and Regulation 823, as set out above.

Representations

Police's fee estimate and representations

In response to the appellant's request, the Police provided the appellant with a fee estimate (and accompanying interim decision) detailing a total estimated fee of $14,715.00. The fee estimate provided a written breakdown of the work required to obtain the requested information which included computer programming to extract the requested information from the current database, and a subsequent manual search of information contained in that database. The fee estimate included a breakdown of the fee to be charged for performing the work. The Police also attached a separate invoice to the fee estimate itemizing more succinctly the hourly rates charged for computer programming time and search time, along with the estimated number of hours required.

In their representations, the Police explain in more detail that they do not record the information on its database in the format requested by the appellant. They submit that there is no specific field that directly responds to the information sought by the appellant but there are "several" fields that "may contain potentially responsive information" and "in order to locate all potentially responsive records, a review of the records would be required in order to determine whether any missing information would be contained in the non-searchable text portion of the records". They explain in their submissions:

> Some of the fields contained in the responsive records are electronically searchable, while others are text based and do not provide for retrieval though the adaptation of a computer program. For those fields which are not able to be searched electronically to locate the specific information responsive to the request, a manual search and review of the records would be required to determine if responsive information was contained in the text based portion of the records.

Based on that explanation, the Police submit that to locate the information responsive to the appellant's request would require technical personnel to adapt the computer program and that, in

the case of information responsive to Items 1, 3, and 4 of the appellant's request, a subsequent manual search to retrieve the information sought by the appellant would be required.

The Police reiterate the details of their fee estimate and submit that technical staff would require one hour, at $60.00 per hour as specified in section 6 of Regulation 823, to adapt the computer program to produce the information required to respond to Item 2 of the request and four hours (also at $60.00 an hour) to produce a list of cases which is necessary to subsequently enable them to locate information responsive to Items 1, 3, and 4, of the request. They explain that once the case list is generated, a manual search, encompassing about 480.5 hours of search time, would be required to review and identify which of the records would contain information responsive to Items 1, 3, and 4.

In their representations, the Police explain the basis for the 480.5 hours of manual search time of the cases identified on the case list. They submit:

> [T]his portion of the fee estimate was derived from multiplying the number of potentially responsive investigations with that of an average search time per investigation. Information obtained from the [Toronto Police Service] Annual Statistical Reports provided the basis for the number of potentially responsive investigations, and a representative search and review of five investigations provided the basis for an average search and review time per investigation.
>
> Annual Statistical Reports of the [Police] record the number of both "reported" and "cleared" investigations of "robberies (including financial institutions)". The [Police] determine that the most reasonable estimate would be derived from using the number of "cleared" robbery investigations as the majority of the "cleared" investigations are as a result of an individual being arrested for that offence. The category of investigations closely matches the types of investigations in which the [Hold Up Squad] may become involved.
>
> The total number of "cleared" robbery investigations used as a basis for the calculation was 13,563. This included the full calendar years of 1997 to 2003, plus three-quarters of the year 2004 (to the end of September 2004).
>
> The analyst assigned to this request is familiar with the search capabilities and responsive records located on the [Case Tracking System, or CIPS]. The analyst conducted a representative sample search of five investigations. The search included a review of the records to determine whether responsive information was contained in the text-based portion of the records. The search of the five investigations took 10 minutes and 38 seconds. The average time per investigation was 2 minutes and 7.6 seconds.
>
> The search time per investigation (127.6 seconds) was then multiplied by the number of investigations (13,563) to determine the number of seconds

(1,730,638.8), then divided by 60 to determine the number of minutes (28,843.98), and then divided by 60 to determine the number of hours (480.733) of search time.

The search time of 480.733 hours was then rounded down to the nearest 15 minute interval of 480.5 hours.

Appellant's representations

The appellant takes the position that the fee of $14,715.00 is unreasonable and that it should not be upheld. The appellant lists a number of reasons in support of his position, including:

- The [Police] statement about how the fee is broken down is not satisfactory and/or sufficiently detailed.

- The [Police] statement about how the fee was calculated is not satisfactory and or sufficiently detailed.

- The number of hours of labour ostensibly required for anticipated work performed by the [Police] is excessive and/or unsubstantiated.

- Insufficient evidence has been submitted and/or exists to support the purported reasonableness of the fee.

- The prospective work described as adapting "computer programming" or effectively characterized as adapting, creating or developing a "computer program" by the [Police] in its description of what activity is necessary to process the appellant's request is actually or better described as or analogous to a database "query". Accordingly, the hourly rate at which that activity could be billed should be reduced by at least 50%.

- The methods chosen by the [Police] to process the appellant's request are not the most or more cost effective methods, and/or the [Police] have not proven the cost effectiveness of its methods.

- The appellant, having reviewed the respondent's representations, is now aware of other ways in which to focus his access request so that its processing should be less costly [as described below].

The appellant also submits:

- The [Police have] not defined or explained what the "technical issues" are, nor how they specifically add to the labour costs for processing the request.

- The [Police have] not provided any detail about which "staff" would be involved in processing the request, i.e. what are their titles, how many "staff" will be involved, what are their duties, how are these staff deemed appropriate for processing the request?

- The [Police have] not provided any detail about what the "adaptation" of computer programming would involve.

- The [Police have] not indicated when the fee estimate was prepared or who prepared it (not necessarily the name of the person but the role, capacity and/or duties of the person (or persons) directly or indirectly responsible for creating the estimate).

- The [Police have] not provided enough detail about its process in obtaining a "representative sample" of responsive records, cases, etc. For example, it is not clear when this process occurred or in what capacity the person obtaining the sample works.

- From the [Police's] representations, letters, etc., it is not clear which specific fields on which specific records are electronically searchable in the Case Tracking System.

- The [Police have] not indicated the frequency with which one might expect to find blank or incomplete fields on records from the Case Tracking System.

- As the [Police] posited in paragraph 7 of [their] representations, the appellant is not seeking access to records relating to investigations in which no arrest has been made, accordingly, this fact has helped narrow the request from the outset.

- Every possible instance of Hold Up Squad ("HUS") participation, however minor, is not the focus of the appellant's request. Instead the appellant's focus is on cases where one could reasonably state that the HUS had primary responsibility.

- Accordingly, the appellant's intention in requesting records from cases "processed by the Hold Up Squad" is better interpreted as relating to those investigations in which the HUS was designated as "Case Manager", not those in which the HUS merely assisted.

- If the appellant's intention as described above is applied to interpret the request, the scope of the activities required to process the request is narrower than described in the [Police's] representations.

- Arguably, if the access request were processed by searching the [Case Tracking System] for records in which the HUS is noted as:

  (1) designated "Case Manager",

  (2) the unit to which the investigating officer is assigned,

  (3) the "Case Unit", or

  (4) the unit to which the officer preparing a supplementary report (including "Charge list" and "Charge Synopsis") is assigned,

  then the scope of "all potentially responsive records" would be significantly reduced and manual examination of non-searchable text would likely be eliminated. Accordingly, a corresponding effect on the fee should be expected.

Police's reply representations

On reply, the Police respond to the appellant's suggestions on how the Police might better conduct a search of the available information to reduce the scope of potentially responsive records by explaining that his suggestions would not only modify the scope of the request, but would not result in any change to the volume of records that would be required to be searched. They submit:

> The phrase "investigating officer" [referred to by the appellant in his representations] is a term that is used to describe the nature of an officer's involvement in an investigation. As an example, an officer may be described as an "investigating officer" as opposed to an "arresting officer". "Investigating officer" is not synonymous with the tile "Case Manager". As an example, 52 Division officers may investigate a robbery occurrence. Officers from the HUS are then called in to participate in the investigation given their expertise in certain areas of investigation.
>
> In the preparation of various records, the HUS officers could be described as "investigating officers" while officers from 52 Division remain the "Case Managers". Records described as "supplementary reports" [referred to by the appellant in his representations] can be prepared by "investigating officers" even though the officer may not be attached to the unit responsible for the investigation. Officers from the HUS may prepare supplementary reports outlining their involvement in an investigation as "investigation officers" while not having the designation as Case Manager.

> In the circumstances outlined [in the paragraph above], or where HUS officers are only noted in a non-searchable text portion of a record as "investigating officer", those prepared records would also be considered responsive to the request…

The Police also respond to the appellant's concern that he was provided with an insufficient explanation as to what "technical issues" exist that make the information requested in Item 2 for the years 1994 to 1996 impossible to retrieve. On reply the Police submit that the current database was put into place in 1997, and prior to that time there were no records kept on which arrests were assigned to the HUS as opposed to the local division. They also advise that the fee estimate did not contain any costs related to that portion of the request.

Finally, the Police take the position that the creation of a query format is properly described as an "other method of producing a record from machine readable records" and therefore, that the creation of the query format has been properly estimated using the calculation of $60.00 per hour, pursuant to Regulation 823, section 6, paragraph 5. They submit that only after the creation of a query format can an electronic search of the machine readable record contained in the database be conducted.

Analysis and finding

As stated above, the purpose of a fee estimate is to provide the requester with sufficient information to make an informed decision on whether or not to pay the fee and pursue access to the requested records. In the current appeal, the Police's original fee estimate provided the requester with a breakdown of the fee and a detailed description as to how the fee was calculated for the itemized requested information, including the undertaking of a two-step process that was required to locate information responsive to Items 1, 3 and 4 of the appellant's request. In my view, the fee estimate was sufficiently detailed to provide the appellant with the requisite information to make an informed decision on whether or not to pay the fee.

As the Police's fee estimate is over $100, it must 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 contents of the records. The Police identify that their fee estimate is based on a combination of the advice of an analyst who is familiar with the information contained in the database and the search capabilities of the database, as well as a search of a representative sample of the cases to determine the time it would take to establish whether or not they contain information responsive to the request.

I must review the reasonableness of this estimate in terms of the type of work and the amount of time required to respond to the request. As noted above, the appellant takes the position that certain identified work required does not amount to "computer programming" within the meaning of paragraph 5 of section 6 of Regulation 823, and that the number of hours of labour is excessive and unsubstantiated.

Dealing first with the issue of the costs related to "developing a computer program or other method of producing a record from a machine readable record", the Police submit that one hour of computer programming would retrieve the information responsive to Item 2 of the appellant's request and four hours of computer programming would be required to generate a case list which would enable the retrieval of information responsive to Items 1, 3 and 4 of the appellant's request.

The appellant argues that the work required to be done to respond to his request does not amount to "computer programming" but is more of a "query" for which he should be charged the regular search fees of $30 per hour for "preparing a record for disclosure" under paragraph 4 of section 6 of the Regulations, rather than the computer programming fees of $60 per hour under paragraph 5 of section 6. In his representations, the appellant makes brief mention of Order MO-1456.

In Order MO-1456, based on the representations before her, Adjudicator Dawn Maruno found that the City of Hamilton could not charge the computer programming fee of $60 per hour for developing "queries" to extract responsive information from a database. Adjudicator Maruno identified the difference between a computer program and a database query and stated "the development of a computer program is a complicated process utilizing high-level computer language, while the development of a query is comparatively straightforward". While she acknowledged that "the language used is not determinative of the activity" she was of the opinion that the work undertaken by the City in that appeal was more like the development of a query than a computer program.

However, in the circumstances of this appeal, I am satisfied that the Police can properly charge the amount of $60 per hour as set out in paragraph 5 of section 6 of Regulation 823 for the identified work. Paragraph 5 establishes the fee for "developing a computer program **or other method of producing a record from machine readable record**" [my emphasis]. Although, in Order MO-1456, Adjudicator Maruno did not address the "other method of producing a record" component of paragraph 5 of the fee schedule, in my view, it is significant and relevant to the current determination. As described by the Police in their representations, their database does not record the information sought by the appellant in the manner requested, and a way in which to extract the information must be developed by technical personnel. Logically, and as confirmed by the Police, the responsive information taken from disparate parts of the database would then be compiled to produce two new records. The first, to respond to Item 2 of the request and the second, a case list required to enable a further search to locate information responsive to Items 1, 3, and 4 of the request. Regardless of whether the work which must be done to extract the responsive information can be defined as computer programming or not, in my view, it clearly constitutes another "method of producing a record from a machine readable record".

As for the amount of time estimated by the Police to perform this task, given the volume of records and the way in which information is compiled in their database, I accept their submission that it would take one hour to produce a record responsive to Item 2 and four hours to produce records required to identify the information responsive to Items 1, 3, and 4.

Accordingly, I find that for the computer work required, the Police have properly charged $60 per hour under paragraph 5 of section 6 of Regulation 823, and that their estimated total time of five hours is reasonable.

Regarding whether the estimated 480.5 hours of manual search time required to respond to the request is reasonable, based on the Police's explanation of the steps required to located the responsive information and on their estimates of both the number of cases to be reviewed and the time required to determine whether those cases contain any responsive information, I disagree with the appellant's contention that the estimated number of hours of labour is excessive and unsubstantiated. I am satisfied that, based the number of cases that will have to be reviewed to locate information responsive to the request, the way in which the responsive information is contained in the database, and on the representative sample considered by the Police, 480.5 hours is a reasonable estimate for the search time required to respond to the appellant's request.

The appellant also takes the position that the methods chosen by the Police to respond to his request are not the most cost effective. The *Act* does not specify that an institution is required to use the most cost effective method of search and preparation available to it, although previous orders of this office have commented on this issue [see Orders M-372 and M-555]. However, having reviewed the representations of both parties, it is neither readily apparent to me, nor have I been provided with evidence to show that the processing methods chosen by the Police are not cost effective or that there exists a more cost effective manner in which to process this request. The method chosen by the Police appears to me to be reasonable taking into account the type of information, the way in which it is stored in the database and the volume of information covered by the request.

As for the appellant's arguments that the fee could be reduced if the Police would search for the responsive information in an alternative manner, I have not been provided with sufficient evidence to show that his suggestions would be more cost effective, less time consuming or less complicated than the method chosen by the Police.

In conclusion, I am satisfied that the Police's fee estimate of $14,715.00 is reasonable.

FEE WAIVER

Section 45(4) of the *Act* requires that an institution 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.

Section 45(4) provides:

> 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 in the regulations.

Section 8 of Regulation 823 prescribes, in part:

> 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.
>
> …

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 waiver should be granted. Under section 45(5), an appellant has the right to ask this office to review an institution's decision not to waive the fee. This office may then either uphold or overturn the institution's decision [Orders M-914, P-474, P-1393, PO-1953-F].

Section 45(4) requires that I must first determine whether the appellant has established the basis for a fee waiver under the criteria listed in section 45(4).

Basis for fee waiver

Although the appellant did not provide this office with representations on the issue of fee waiver, he did submit a detailed fee waiver request to Police. The request was denied by the Police. Based on the appellant's request for a fee waiver, he submits that the grounds for the granting of a fee waiver have been established under section 45(4)(b) (financial hardship) and section 45(4)(c) (dissemination of the information will benefit public health and safety). For the purposes of this appeal I will take into consideration the submissions made in the appellant's request for a fee waiver, submitted to the Police.

Financial hardship

It has been established in previous orders that the person requesting a fee waiver bears the onus of establishing financial hardship under section 45(4)(b) and must justify the waiver request by demonstrating that the criteria for a fee waiver are present in the circumstances (Orders M-429, M598 and M-914).

The appellant lists the following as grounds for his fee waiver request on the basis of financial hardship:

- The appellant has made the access request as an individual, not on behalf of a corporation or other commercial entity.

- The total estimated fee of $14,715.00 represents [an identified percentage] of the appellant's average income over the last two years.

- The appellant is self-supporting and self-employed. He is responsible for all of his personal and business expenses which include housing, transportation, etc.

- Requiring the appellant to pay the estimated fee or even the 50% deposit towards the estimated fee will cause financial hardship for the appellant.

The appellant also requests that if the fee is not waived in its entirety that a majority of the fee be waived.

While I acknowledge that $14,715.00 is a large sum of money for many individuals, in my view, the appellant has failed to provide sufficient evidence of financial hardship to justify granting of a fee waiver. As mentioned above, the requester bears the onus of establishing financial hardship under section 45(4)(b). Generally, to meet the "financial hardship" test to justify a fee waiver, the 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 the present appeal, although the appellant has provided some information regarding his income, he has not provided sufficient additional detail and I find that, in the absence of such detailed information, section 45(4)(b) has not been established.

Benefit to public health or safety

A fee waiver may also be granted where it can be established that dissemination of a record will benefit public health or safety under section 45(4)(c) of the *Act*. In previous orders, the following factors have been found to be relevant in making a determination that section 45(4)(c) applies:

- Whether the subject matter of the record is a matter of public rather than private interest.

- Whether the subject matter of the record relates directly to a public health or safety issue.

- Whether the dissemination of the record would yield a public benefit by

  (a) disclosing a public health or safety concern, or

  (b) contributing meaningfully to the development of understanding of an important public health or safety issue.

- The probability that the requester will disseminate the contents of the record.

[Orders P-2, P-474, PO-1953-F, PO-1962]

This office has found that dissemination of the record will benefit public health or safety under section 45(4)(c) (or the equivalent section 57(4)(c) in the provincial *Freedom of Information and Protection of Privacy Act*) 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 lists the following grounds for a fee waiver that are relevant to a determination of whether section 45(4)(c) applies:

- The appellant plans to review, analyze and disseminate (via freelance or other available writing projects) the information revealed by and through analysis of the records requested.

- Dissemination of the information arising from the records request should benefit public safety and health by, among other things, increasing community knowledge about the status of serious cases involving alleged violence and dishonesty (for e.g. commercial robberies or residential invasions) within their

> immediate and surrounding neighbourhoods, enhancing local residents' knowledge about the nature of the alleged robberies in their communities so they can educate themselves for purposes of prevention, potential cooperation with police on unresolved cases, etc., and developing the public's general knowledge about how Hold-Up Squad cases are investigated and resolved, so it can consider its views on such methods' impact on community safety.

In the current appeal, the appellant has requested access to information dealing with cases processed by the HUS, including the total number of cases processed over a particular time span, the areas from which those cases originated, and the disposition of those cases. While I accept that on a very basic level there might be a public interest in this information in the way in which the public might have a general interest in a great deal of the information held by the Police, I have not been provided with sufficient information to conclude that there is a specific interest held by the public in general regarding the particular information that the appellant is seeking. In the current appeal I have no evidence that shows that the information at issue is currently being discussed in the public realm or is an issue of general public concern or curiosity.

Even if the appellant had established that the information is of public interest, the focus of section 45(4)(c) is "public health or safety". It is not sufficient that there may be a "public interest" in the records or the public has the "right to know"; previous orders have 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].

The appellant posits that the public interest in the information relates to a public safety issue because dissemination of this information would increase community knowledge of the status of serious crimes in various neighbourhoods as well as the way in which the HUS goes about investigating cases to which it is assigned. In essence the appellant argues that the information relates to a public safety issue because the Police are involved and it deals with matters related to crime. On this logic, virtually every request involving information held by the Police would amount to a request for records of public interest that relate directly to a safety issue. While I accept that in some cases the connection between public interest and a public safety issue could certainly be established with respect to records held by the Police, in my view, in this case, the appellant has not provided me with sufficient evidence to establish even a prima facie public safety issue that goes beyond the problem of crime and the Police's activity in its most general sense.

Accordingly, I find that the appellant has not established the requirements of section 45(4)(c) and the fees should not be waived on the basis of "benefit to public safety".

In summary, I find that the appellant has not established the basis for a fee waiver under either section 45(4)(b) or (c). Based on the evidence and arguments before me, I also find that it would not be fair and equitable to waive the fee.

ORDER:

1. I uphold the fee estimate of $14 715.00 provided by the Police.

2. I uphold the Police's decision not to grant a fee waiver under section 45(4) of the *Act*.

Original signed by: July 26, 2006
Catherine Corban
Adjudicator