



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2167

Appeal MA-050339-1

Midland Power Utility Corporation



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NATURE OF THE APPEAL:

The Midland Power Utility Corporation (the MPUC) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for hard or electronic copies of:

1. minutes of all committee meetings for 1999 to 2003;
2. purchase price and realtor involved in the acquisition of the current Midland P.U.C building;
3. name of the legal firm who handled the transaction;
4. over-all costs of renovations to the building prior to moving from your previous location;
5. any info concerning the decision to rent out part of the building; specifically why the decision was made, minutes to any special meeting to discuss it, dates and names of newspapers in which the availability of space was advertised; and
6. the cost of any further renovations to accommodate the tenants' needs, the amount of monthly rent paid by the tenant and the author of the lease agreement signed by both parties.

The MPUC located records containing the information requested in parts 1, 2, 4, 5 and 6 of the request and denied access to them pursuant to the exemptions in sections 6, 7, 9, 10, 11, 12, 14 and 15 of the *Act*. The MPUC also issued the requester an invoice for fees in the amount of \$846.06. The requester, now the appellant, appealed this decision.

During the mediation process, the parties agreed to participate in a telephone meeting facilitated by the mediator. At the end of the mediation meeting, the appellant narrowed the scope of his request to include only those records for the period 1999 to 2003 relating to parts 2, 4, 5 and 6 of the request (records relating to the purchase and lease of the property in question). The MPUC, in turn, agreed to review its original fee and access decision and report back to the appellant.

A few weeks after the mediation meeting, the MPUC issued a second decision letter and provided the appellant with information relating to parts 2, 4 and 5 of the request. The MPUC also provided some information related to part 6 of the request, but denied access to the amount of monthly rent paid by the tenant, pursuant to the mandatory exemptions in sections 10(1) and 14(1) and the discretionary exemption in section 11(c) of the *Act*. The MPUC also reduced its fee from \$846.08 to \$316.00.

The appellant, in turn, requested that the mediator contact the MPUC to obtain further particulars regarding the information provided in response to part 5 of the request. The appellant also asked the mediator to make inquiries into the assessed value of the property in question. The MPUC responded by letter to the appellant and provided information addressing the appellant's

inquiries. The MPUC also indicated in its letter that a further 1.25 hours in search time was expended to address the appellant's inquiries. The only remaining record at issue following mediation was a document which described the amount of rent paid by the tenant.

At the end of the mediation process, the appellant indicated that he wanted to continue to appeal the MPUC's fee and its access decision regarding his request for the amount of the monthly rent paid by the tenant. The MPUC forwarded its final fee invoice for \$356.13 to this office and the appellant. The appellant informed the mediator that he is not applying for a fee waiver.

I commenced the adjudication portion of this inquiry by issuing a Notice of Inquiry to the MPUC requesting that it provide me with representations. The MPUC provided representations. I then sent a Notice of Inquiry to the appellant, along with the non-confidential portion of the MPUC's representations. In response, I received representations from the appellant.

Part way through my inquiry, I received a copy of a letter from the MPUC to the appellant enclosing a copy of the lease which contained the rental amount at issue. As a result, the sole issue remaining is the appropriateness of the fee charged by the MPUC.

DISCUSSION:

The *Act* requires an institution to charge a fee for responding to requests. Section 45(1) of the *Act* 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.

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

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 estimate, and may uphold the decision or vary it.

Representations

The MPUC's representations identify how its fee was calculated. The representations state:

Search: The requested records are kept in storage, vault and filing cabinets/boxes. In order to determine where the information was kept a review of the file log was done, a list was prepared for all relevant general ledgers, the information was retrieved from storage, a search was made for information pertaining to the purchase of the property, a search was made for financial statements for the years in question. (2 hours); search of minutes for meetings for the year 2002, search of lease file (.75 hour).

Preparation: The records do not contain the requestor's personal information. The time required to prepare the records for disclosure included,

- examining general ledgers (1998-2001) for relevant costs (1 hour)
- examining financial statements (1998-2001) (1 hour)
- listing of invoices from general ledger (1 hour)

- retrieval of invoices from closed out filing system (2.0 hours)
- examining invoices to determine whether invoices are applicable (1.5 hours)
- review of corporate minutes (1 hour)
- meeting with previous CEO (.5 hours)
- severing minutes for June & July 2002 (.5 hours)

The searches and preparation of records required the institution to review four years of financial data, corporate minutes, and financial statements. The invoices prepared and submitted, in the view of the institution is reasonable.

The appellant disputed the amount of the fee by submitting the following:

While a member of Council for the Town of Midland I often marvelled at the expediency and efficiency of the Municipal office staff. I realize that the MPUC is a totally separate entity but I doubt the skills of the staff members are any less efficient. I therefore have my doubts that the time billed is accurate.

The appellant also contends that the fee was reduced simply because he re-focused his request, resulting in a number of documents no longer being required.

Analysis and Findings

Section 45(1) of the *Act* requires an institution to charge fees for requests under the *Act*. In all cases, the institution must include a detailed breakdown of the manner in which the fee is calculated. On appeal, this office reviews an institution's fee and determines whether it complies with the fee provisions in the *Act*.

I have carefully examined the MPUC's representations and its calculation of the fee. Based on my examination, I uphold the fee of \$356.13 for the search and preparation it conducted. I find that the MPUC has reasonably explained the necessity of the preparation activities that were actually undertaken in connection with this request. The MPUC provided a detailed breakdown of the fee and how the fee was calculated, based on actual work done.

The *Act* operates on a user pay principal and the user is expected to pay for the reasonable costs of work undertaken in responding to a request under the *Act*. In this case, the appellant has received the record he sought and is now being asked to pay for the search and preparation time involved in processing the request. I also find that the MPUC made a good faith effort to reduce the fee as the process unfolded through the various stages of this appeal. The appellant has provided no basis in his representations that lead me to a different result. As a result, I find that the fee is reasonable and was calculated in accordance with the requirements of the *Act*.

ORDER:

I uphold MPUC's fee of \$356.13.

Original Signed by: _____
Brian Beamish
Assistant Commissioner

_____ February 28, 2007