



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

# **ORDER MO-2505**

**Appeal MA08-352-2**

**Timiskaming Health Unit**



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## NATURE OF THE APPEAL:

The Timiskaming Health Unit (the Health Unit) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for copies of all recommendations of approval for an identified class of sewage systems made in the Health Unit's jurisdiction "as they pertain to Application for Consent for severance from 2003 to the present". The information sought included the dimensions of both the parts to be severed and the parts to be retained.

After addressing a "deemed refusal" issue, which was resolved when Appeal MA08-352 was closed, the Health Unit issued a decision letter which stated that it had calculated a fee estimate of \$450 for processing the request. The decision also indicated that the requester could apply for a fee waiver.

The requester, now the appellant, appealed the Health Unit's decision to this office, and the present appeal file (MA08-352-2) was opened.

During mediation, the Health Unit provided the appellant with a detailed breakdown of the \$450 fee estimate and a description of the responsive records. It sent a supplementary decision letter to him stating that it had located 149 files and that preparing these files for disclosure took three days. In addition, it stated that "time was spent manually searching, retrieving, processing and copying the records."

The appellant requested a more detailed breakdown of the fee estimate and a better description of the records that were located by the Health Unit. In response, the Health Unit sent a second supplementary decision letter to the appellant that included the following breakdown of the \$450 fee estimate:

Search - 5 hours @ \$30 per hour = \$150  
Preparation - 6.5 hours @ \$30 per hour = \$195  
Photocopying - 500 pages @ \$0.20 per page = \$100

In addition, it provided the following description of the records:

- 146 files contained applications for lots over 1 acre, diagrams and our letter of recommendation. All 146 files received approval and all files were over 1 acre.
- 2 files contained applications for lots under 1 acre, diagrams and our letter stating that "The [Health Unit] has a recommendation that [proposed] new lots have at least one acre."
- 1 file contained an application for a lot under 1 acre and had received previous approval.

The parties then agreed to participate in a teleconference with the mediator in an attempt to narrow the scope of the request and thereby reduce the fee estimate. During this teleconference, the appellant specified that he is only seeking access to the letters of recommendation relating to 41 files that the Health Unit sent to the Ministry of Municipal Affairs and Housing (the Ministry). After the teleconference, he emailed the Health Unit a list of file numbers for 40 files.

Based on the appellant's narrowed request, the Health Unit issued a revised decision letter that stated the following:

We have found 21 out of the 40 letters that you had requested. We have 24 letters for consent that have no [Ministry] file number. This happens when the client asks for an inspection prior to [the Ministry] assigning a file number and then sends a copy of my letter with the application for consent to [the Ministry].

It would be up to you to provide our Chief Building Officer ... with the legal description of the balance of your request and then he could locate the file.

Based on our review of the records obtained from the requested information, I estimate there are approximately 20 pages of records responsive to your request and the total fees to process your request will be \$124.00.

The fee estimate is broken down as follows:

Search - 3 hours @ \$30 per hour = \$90.00  
Preparation - 1 hour @ \$30 per hour = \$30.00  
Photocopying - 20 pages @ \$0.20 per page = \$4.00

In response, the appellant informed the mediator that he continued to appeal the Health Unit's revised fee estimate. He further stated that he disagrees with the Health Unit's position that it is up to him to provide the Health Unit with the legal description for the properties relating to the letters of recommendation that have no file number.

The appellant also submitted a formal fee waiver request to the Health Unit, claiming that payment would cause him financial hardship. The Health Unit denied the appellant's fee waiver request, and the appeal of the Health Unit's fee waiver decision was added as an issue in this appeal.

The appellant also took the position that he is entitled to a more detailed description of the responsive records.

Mediation did not resolve the issues, and this appeal was transferred to the inquiry stage of the process. A Notice of Inquiry identifying the facts and issues was sent to the Health Unit, which provided representations in response. The Notice of Inquiry, along with a complete copy of the Health Unit's representations, was sent to the appellant, who also provided representations. The appellant's representations were in turn shared with the Health Unit, which then provided reply representations.

This file was subsequently transferred to me to complete the inquiry process.

## **DISCUSSION:**

### **PRELIMINARY ISSUES**

#### **Compliance with section 17 of the Act**

The background information set out above identifies the steps that were taken by the Health Unit in processing the appellant's request. The initial request was for all recommendations of approval for identified sewage systems for a period of time, and the Health Unit identified 149 responsive records. During mediation, the appellant specified that he is only seeking access to the letters of recommendation relating to 40 identified files that the Health Unit had sent to the Ministry, and he provided the Health Unit with a list of 40 Ministry file numbers. The Health Unit responded by indicating that, based on the file numbers provided, it could identify 21 responsive records because it had the corresponding Ministry file numbers recorded. It also indicated that it could not identify the remaining requested records, as the other records in the Health Unit's possession did not contain the Ministry file numbers. The Health Unit then asked the appellant to provide it with further identifiers, such as a legal description or address, to assist the Health Unit in identifying the remaining records of interest to the appellant.

The appellant takes the position that the Health Unit has an obligation in these circumstances to identify the records responsive to the request. The appellant states:

It is my understanding by reading section 17 of the *Act* that if two institutions are involved a certain level of cooperation may be required to satisfy a request. Yes, the file numbers I supplied to the [Health Unit] were supplied by [the Ministry]. Surely the [Health Unit] can liaise with [the Ministry] to solve the mystery of the other ... files.

... There appears to be a total of 44 or 45 letters to respond to the [40] files that I identified. The Health Unit suggests that I provide them with a legal description of the relevant properties. As far as I know, only the [Health Unit] and/or [the Ministry] and the Land Titles Office would have this information.

In its reply representations the Health Unit reiterates that there is no Ministry file number for the remaining records, and states:

... the [Health Unit] will receive no [Ministry] file numbers for some applications. For example, if a landowner/client receives approval from the [Health Unit] prior to their application to the Ministry, [the Health Unit] may not receive a [Ministry] file number for that client unless there is a problem. We would need a legal description, owner name and township in order to track down and match our letters of recommendation to the [Ministry] files [the appellant] is requesting.

### *Analysis and Findings*

Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

- (1) A person seeking access to a record shall,
  - (a) make a request in writing to the institution that the person believes has custody or control of the record;
  - (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; and
  - ....
- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

On my review of the circumstances of this appeal, I am satisfied that the Health Unit has complied with its obligations set out in section 17 of the *Act*.

The clarified and narrowed request submitted by the appellant was for the letters of recommendation relating to 40 files that the Health Unit sent to the Ministry. The appellant's request simply identified these files by the Ministry file numbers. The Health Unit was able to identify 21 of the responsive records, as these records also referred to the Ministry file numbers. The Health Unit was unable to identify the other requested records by the Ministry file numbers alone, because the Health Unit records did not contain those file numbers. The Health Unit also provided an explanation as to why the records did not contain the Ministry file numbers. It explained that the file numbers are added by the Ministry at a certain point in the process, and that if the files are sent by the Health Unit to the Ministry before the file number is assigned, the Health Unit would not have that file number in its records.

There is no evidence before me to suggest that the Health Unit does not properly maintain its records, or that it is obliged to maintain a record with the Ministry's file number. The appellant is of the view that the Health Unit has a positive obligation to contact the Ministry and confirm which files the appellant is requesting by cross-referencing the data in the Health Unit files with the Ministry files and file numbers. In my view, section 17 does not impose such an obligation on an institution. Section 17 requires a requester to provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record. In the circumstances of this appeal, an experienced employee armed with the information provided by the requester would be unable to locate the records without contacting the Ministry and conducting further research. In my view, the Health Unit is not required to do so in these circumstances.

Furthermore, I am satisfied that the Health Unit has attempted to assist the requester by advising him of the type of information that is necessary to allow it to locate the records without the file numbers, as required by section 17(2). Earlier in the process, the Health Unit had also identified for the appellant the nature of the information located in the Ministry files, to assist the appellant in narrowing his request. In the circumstances of this appeal, I am satisfied that the Health Unit has met its obligation under section 17 of the *Act*.

I also note that, based on the evidence provided, the appellant ought to be able to identify the records he is interested in by contacting the Ministry and obtaining additional information which would enable the appellant to provide sufficient detail to the Health Unit to allow it to locate the records. I have not been provided with information to suggest that the appellant could not obtain additional information from the Ministry regarding the identification of the remaining 19 files. This not a situation where the only method of identifying responsive records rests in the hands of the institution to which the request is made, and it may be that, in those circumstances, different considerations may apply.

### **Adequacy of the description of the records**

The appellant takes the position that the Health Unit has not provided an adequate description of the records responsive to the request. In support of this position, the appellant refers to the initial request for 149 records and the narrowed request which has resulted in a total of approximately 45 records responsive records being identified, and the specific identification of 21 records.

In the circumstances of this appeal, I am satisfied that the Health Unit has provided an adequate description of the responsive records. The Health Unit described the records responsive to the appellant's original request, and also classified the 149 records and described them in some detail in its second supplementary decision letter. With respect to the narrowed request, the Health Unit has indicated that it has located 21 letters of recommendation, and that these are the records responsive to the request. In the circumstances, I am satisfied that the Health Unit has provided an adequate description of the records responsive to the request.

### **FEE ESTIMATE**

#### **General principles**

Section 45(1) authorizes 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 of Regulation 823 made under the *Act*. That section 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 records provided on CD-ROMs, \$10 for each CD-ROM.
- 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, an 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 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 823, as set out above.

### **The Health Unit's revised fee estimate decision**

As set out above, the Health Unit provided a revised fee estimate decision, in which it described the costs which form the basis of the fee estimate of \$124.00 as follows:

<b>Description</b>	<b>Time</b>	<b>Total</b>
Search time	3 hours	\$90.00
Preparation time	1 hour	\$30.00
Photocopying charges (20 pages @ .20/copy)		\$ 4.00
<b>Total</b>		\$124.00

### ***Representations and findings***

The appellant's representations focus on his view that the time to respond to both the initial as well as the narrowed request is excessive. He also suggests that the Health Unit's record-keeping practices ought to be more efficient and organized, which would result in more reasonable fees.

In its reply representations, the Health Unit confirms that it based its fee estimate on the actual work that was done to respond to the request. The Health Unit also states that its initial fee estimate of \$450.00 (in response to the initial request) reflected the time it took to actually respond to the initial request, and that the subsequent reduction in the fees based on the narrowed request reflects the costs chargeable under the *Act*.

Based on the information before me, including the revised fee estimate as well as the representations of the parties, I make the following findings regarding the fee estimate in this appeal.

#### ***Search time***

The Health Unit's revised fee estimate identifies that three hours were spent on searching for records responsive to the request. I note that the Health Unit initially identified that it took a search time of 5 hours to actually respond to the initial request. The revised fee estimate in response to the narrowed request is identified as 3 hours. Although it is not clear to me how the search time was reduced by two hours, this is the estimate provided by the Health Unit. In the circumstances, I am satisfied that the search time of 3 hours has been calculated in accordance with the requirements of the *Act*. I base this finding primarily on the Health Unit's description of the actual time it spent to manually search for the records responsive to the request. Accordingly, I find that this aspect of the Health unit's fee estimate is reasonable, and uphold the fee estimate of \$90.00 for the search time associated with responding to this request.



*Preparation time*

Previous orders have addressed the issue of what types of activities can be included in “preparation time.” In Order MO-1380, former Senior Adjudicator David Goodis stated:

“Preparing the record for disclosure” under subsection 45(1)(b) has been construed by this office as including (although not necessarily limited to) severing exempt information from records (see, for example, Order M-203). On the other hand, previous orders have found that certain other activities, such as the time spent reviewing records for release, cannot be charged for under the *Act* (Orders 4, M-376 and P-1536). In my view, charges for identifying and preparing records requiring third party notice, as well as identifying records requiring severing, are also not allowable under the *Act*. These activities are part of an institution’s general responsibilities under the *Act*, and are not specifically contemplated by the words “preparing a record for disclosure” under section 45(1)(b) (see Order P-1536).

In addition, even though the Township provided a detailed breakdown of the time spent preparing records for disclosure/view, it has not provided any information as to exactly what this involved. ... without any additional information from the Township with respect to its fee for the preparation of records for disclosure/view, I am unable to determine precisely what the Township is charging the appellant for in this regard.

Based on the above, I do not uphold this portion of the fee estimate ...

In this appeal the specific information provided by the Health Unit regarding the activities it included in “preparing the record” are sparse, referring only to the \$7.50 for each 15 minutes for “preparing a record for disclosure, including severing a part of a record.” I have not been provided with sufficiently detailed information regarding whether the records have been severed, or what other activities may have been included in the fee estimate for preparation time. Order MO-1380 and the other orders referred to therein clearly state that the time spent reviewing records for release cannot be charged for under the *Act*. Previous orders have also confirmed that time spent re-filing and re-storing files after responsive records have been reviewed or copied, and time spent “retrieving records from bound files” and “removing staples and paperclips” does not qualify as time spent “preparing a record for disclosure” (see Order PO-2574). In the absence of specific information regarding what specific activities contributed to the fee estimate for preparation time, I am unable to determine precisely what the Health Unit is charging the appellant for in this regard, and, as a result, I do not uphold this portion of the fee estimate.

### *Photocopying*

The photocopying charges set out in the Health Unit's decision are calculated at the rate of \$0.20 per page, in accordance with item 1 of section 6 of Regulation 823 made under the *Act*. Therefore, I uphold the photocopy charges.

### *Summary*

In conclusion, I am satisfied that the Health Unit's fee estimate for searching and photocopying are appropriate, and I uphold the Health Unit's fee estimates for these charges. However, I do not uphold the Health Unit's fee estimate for preparing the records for disclosure. Accordingly, the Health Unit may charge the appellant \$94.00 for processing this request.

## **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].

### ***Basis for fee waiver***

#### *Section 45(4)(a): actual cost*

The appellant takes the position that the actual cost of processing the request is less than the fee estimate, and refers to the Health Unit's representations which make that statement. The appellant therefore argues that he is entitled to a fee waiver on the grounds that the actual cost of processing, collecting and copying the record varies from the amount of the payment required (section 45(4)(a)).

I have carefully reviewed the representations of the Health Unit. Although it makes the statement that the actual costs of responding to the request is "below what the fee estimate is asking", the other information provided by it to this office, including the information in support of its fee estimate, identify that the actual costs of responding to the request were considerably more than reflected in the fee estimate. The Health Unit refers to spending many "days/hours" putting the information together. Having regard to all of the material provided by the Health Unit, I am satisfied that the actual cost of responding to the request was, in fact, considerably more than the payment required, and that section 45(4)(a) is not a factor in this appeal.

#### *Section 45(4)(b): financial hardship*

The appellant takes the position that he is entitled to a fee waiver on the grounds of financial hardship (section 45(4)(b)). 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 some general information about his current income and circumstances, and very limited information about his financial situation and the financial constraints he faces. In terms of specific evidence in support of the application of section 45(4)(b), the appellant indicates that paying the fee would require an "adjustment" in his budget. On my review of the information provided by the appellant, I am not satisfied that the fee will cause him financial hardship, and I find that he does not qualify for a fee waiver under section 45(4)(b).

### ***Conclusion***

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

**ORDER:**

1. I do not uphold the Health Unit's fee estimate of \$30.00 for preparation time.
2. I uphold the Health Unit's fee estimate for search time and photocopy costs in the amount of \$94.00.
3. I uphold the Health Unit's decision to deny the appellant's request for a fee waiver.

Original signed by: \_\_\_\_\_  
Frank DeVries  
Adjudicator

\_\_\_\_\_ March 18, 2010