



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

ORDER MO-2564

Appeal MA09-376

The Corporation of the City of St. Thomas



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NATURE OF THE APPEAL:

The appellant made a request to the City of St. Thomas (the City) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the following information:

...a copy of all relevant expense documentation associated to [the Mayor] resulting from his business trip to Japan in February 2009, whether those expenses were submitted by [the Mayor] or some other individual or prepaid in advance.

- A copy of all expenses voucher(s) submitted and approved
- A categorized (e.g. meals, travel) daily summary of the expenses incurred
- A copy of all receipts for the expenses claimed
- The dates on which the expenses were incurred
- Identification of the currency used (e.g. US dollars, Canadian dollars, Japanese yen) when the expense was incurred, and the applicable exchange rate used for conversion into Canadian funds
- In recognition of [the Mayor's] declaration to council that he took two "personal days" while in Japan, I ask for that information to be highlighted separately, if those expenses were submitted for approval and payment
- Clearly identify the specific dates taken as two "personal days"

In response, the City issued a fee estimate to the requester advising that the estimated cost was \$50 to prepare a response. The requester then sent in a written request for a fee waiver citing sections 57(4)(a), (b) and (d) of the provincial *Act*, which are the equivalent of sections 45(4)(a), (b) and (d) of the *Act*. In response to the fee waiver request, the City advised the appellant that the fees would not be waived.

Prior to mediation, the City issued a revised decision to the appellant, stating the actual cost to prepare the record is \$77.60. The City also advised that upon receipt of this amount, the record containing the responsive information would be released to the appellant.

During mediation, the City provided the mediator with the breakdown of the fee:

Time required (Treasury Department) to provide information: 2.5 hours x
\$7.50/15 minutes = \$75.00

Number of pages (photocopying fee): 13 x \$.20 = \$2.60

Total Cost: \$77.60

The City further clarified that it required 2 hours and 15 minutes to prepare a report containing the requested information, and 15 minutes to actually conduct the search for the responsive record.

The City also clarified that although some information has been severed from the responsive records, these severances were made prior to the records being submitted to the City by the Mayor. The appellant confirmed that he does not take issue with the severances.

As mediation did not resolve the appeal, the file was moved to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry under the *Act*. During the inquiry into the appeal, I sought representations from the City and the appellant. I received representations from the appellant only, which were shared with the City. The City provided brief representations in reply.

RECORDS:

The records at issue consist of a one-page report and 12 pages comprised of receipts and itemized lists of information.

DISCUSSION:

FEES

I will first determine whether the City's fee of \$77.60 should be upheld.

An institution must advise the requester of the applicable fee where the fee is \$25 or less.

Where the fee exceeds \$25, an institution must provide the requester with a fee estimate [Section 45(3)].

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 [Order 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 and 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 [Orders P-81 and 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 below.

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

A head shall require the person who makes a request for access to a record to pay fees in the amounts prescribed by the regulations for,

- (a) the costs of every hour of manual search required to locate a record;
- (b) the costs of preparing the record for disclosure;
- (c) computer and other costs incurred in locating, retrieving, processing and copying a record;
- (d) shipping costs; and
- (e) any other costs incurred in responding to a request for access to a record.

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

The City submits that its fee estimate was prepared in accordance with the fee schedule provided by this Office.

The appellant submits that he was originally told by the City that the information was a public record and that there would be no charge for him to view the records at the City's offices. The appellant submits that City's fee estimate was an attempt to dissuade him from pursuing access to the records or to penalize him for doing so. The appellant also noted that the amount claimed by the City for preparation was incorrect¹. Finally, the appellant submits that the City took 2 hours and 15 minutes to prepare a report that he did not request.

The City describes that 2.5 hours in its fee estimate as "the time to provide information". In mediation it further clarified this as 2 hours and 15 minutes to prepare a report and 15 minutes of search time. I accept the City's search time of 15 minutes as reasonable for the number of records located, that being the 12 pages of receipts. I uphold \$7.50 of search time for the fee estimate, which is in accordance with the regulation.

On the other hand, I do not accept that the City took 2 hours and 15 minutes to prepare the report. The "report" is a one page record, titled "Japan Trip 2009" and it lists the amounts from the receipts and includes the total amount from all the receipts. The City has not provided me with any explanation of why the report took 2 hour and 15 minutes to prepare, and I do not accept that it took that amount of time to make the necessary calculations and type up the information. I am unable to determine the basis for the time claimed by the City to prepare the report, and do not uphold the fee of \$67.50 for its preparation.

¹ The appellant submits that he should have been charged \$18.75 for preparation not \$75.00. In its reply, the City submits that once the 2.5 hours is broken down into 15 minute intervals, the calculation is 10 X \$7.50 which is \$75.00 as included in its estimate. Section 6 of Regulation 823 allows \$7.50/15 minutes for preparing a record for disclosure.

Further, I find the City's charge for photocopying to be reasonable. As I have found that only 12 pages of the records are responsive to the appellant's request, I uphold a charge of \$2.40 for photocopying 12 pages of record.

In summary, I find the City is only able to charge a fee for its search and photocopying. Based on the regulation, I uphold a fee of \$9.90 only.

FEE WAIVER

Section 45(4) of the *Act* requires an institution to waive fees, in whole or in part, in certain circumstances. Section 8 of Regulation 823 sets out additional matters for a head to consider in deciding whether to waive a fee. Those provisions state:

45. (4) A head shall waive the payment of all or any part of an amount required to be paid under subsection (1) if, in the head's opinion, it is fair and equitable to do so after considering,

- (a) the extent to which the actual cost of processing, collecting and copying the record varies from the amount of the payment required by subsection (1);
- (b) whether the payment will cause a financial hardship for the person requesting the record;
- (c) whether dissemination of the record will benefit public health or safety; and
- (d) any other matter prescribed by the regulations.

8. The following are prescribed as matters for a head to consider in deciding whether to waive all or part of a payment required to be made under the *Act*:

1. Whether the person requesting access to the record is given access to it.
2. If the amount of a payment would be \$5 or less, whether the amount of the payment is too small to justify requiring payment.

The fee provisions in the *Act* establish a user-pay principle which is founded on the premise that requesters should be expected to carry at least a portion of the cost of processing a request unless it is fair and equitable that they not do so. The fees referred to in section 45(1) and outlined in section 8 of Regulation 823 are mandatory unless the requester can present a persuasive argument that a fee waiver is justified on the basis that it is fair and equitable to grant it or the *Act* requires the institution to waive the fees [Order PO-2726].

A requester must first ask the institution for a fee waiver, and provide detailed information to support the request, before this office will consider whether a fee waiver should be granted. This office may review the institution's decision to deny a request for a fee waiver, in whole or in part, and may uphold or modify the institution's decision [Orders M-914, P-474, P-1393, PO-1953-F].

The institution or this office may decide that only a portion of the fee should be waived [Order MO-1243].

The City made no submissions on its denial of fee waiver.

At the start of the appellant's representations, he submits that his request for the information was based on his concern that taxpayers may have paid for personal days taken by the Mayor on his trip to Japan, indicating that his request has a public interest aspect. And, while the appellant does not indicate the basis for his fee waiver, he does provide the following arguments for his fee waiver request:

- **Failure to render a decision under the Act:** The appellant argues that the City originally classified his request as a request for a public record and not as an access request under the *Act*.
- **No fee required:** As the appellant's request was not classified as an access request under the *Act*, he was told to make arrangements to come and review the record. His \$5.00 fee was returned to him.
- **Failure to meet obligations under the Act:** The City did not meet its obligations under the *Act* in informing the appellant about the possibility of fee waiver and the necessary information that must be provided.
- **Fee amount is invalid**

The appellant also argues that it would be fair and equitable in the circumstances to grant him a fee waiver.

There are two parts to my review of the City's decision under section 45(4) of the *Act*. I must first determine whether the appellant has established the basis for a fee waiver under the criteria listed in subsection (4). If I find that a basis has been established, I must then determine whether it would be fair and equitable for the fee, or part of it, to be waived [Order MO-1243].

Previous orders have determined that the person requesting a fee waiver (in this case the appellant) bears the onus of establishing the basis for the fee waiver under section 45(4) and must justify the waiver request by demonstrating that the criteria for a fee waiver are present in the circumstances [Orders M-429, M-598 and M-914].

I have considered the representations of the appellant, as well as other relevant factors related to the issue of fee waiver under section 45(4) of the *Act* and find that the appellant has not established the basis for fee waiver as required. In the circumstances, I am not persuaded by the appellant's evidence that dissemination of the information relating to the Mayor's expenses for his trip to Japan would benefit public health or safety for the purposes of section 45(4)(c).

In addition, I am not persuaded that any of the other considerations set out in section 45(4) of the *Act* or section 8 of Regulation 823 are applicable in the circumstances of this appeal. The appellant has not suggested that paying the fee would cause, or has caused, him financial hardship. In addition, I note that the City has charged the appellant a fee in keeping with what it may charge under the Regulation for the cost of copying the responsive record under section 45(1).

I further note that I have determined that the City cannot charge the \$67.50 for the preparation of the report and thus the only charges remaining are for search and photocopying for a total fee of \$9.90. As stated above, the fee provisions in the *Act* establish a user-pay principle which is founded on the premise that requesters should be expected to carry at least a portion of the cost of processing a request unless it is fair and equitable that they not do so. The fees referred to in section 45(1) and outlined in section 6 of Regulation 823 are mandatory unless the appellant can present a persuasive argument that a fee waiver is justified on the basis that it is fair and equitable to do so.

In conclusion, based on all the circumstances surrounding the appellant's request for a fee waiver, coupled with the user-pay principle inherent in the fee provisions, I uphold the City's decision not to waive the fee in this appeal.

ORDER:

1. I uphold the City's fee of \$9.90 for search and photocopying only.
2. I uphold the City's decision to deny the fee waiver.

Original Signed by: _____
Stephanie Haly
Adjudicator

November 2, 2010