



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

ORDER MO-2592

Appeal MA10-48-2

Municipality of Centre-Hastings



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NATURE OF THE APPEAL:

The Municipality of Centre-Hastings (the Municipality) received an access request pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the “following information related to the monthly approved expenditures of the Municipality:”

- A complete and non redacted copy of the approved voucher and adjustment report also known as the “General Accounts”
- The voucher and adjustment report identified above will cover the period of August 2009 to October 2009
- I further request to exercise Sec. 17(3) of the *Act* to include the approved vouchers and adjustment report for the period of November 2009 – December 2010 and provided immediately following approval.

The requester also requested a fee waiver pursuant to section 45(4) of the *Act* “recognizing that the [requester] is a not for profit group with limited financial resources.”

The Municipality responded to the requester, stating that “Council has passed a resolution whereby those requesting copied materials from the Municipality must pay a fee of \$65.” The Municipality went on to return the \$5.00 cheque received for processing the request and advised the requester that it will not be providing the requested materials. The Municipality also indicated that “upon the provision of the proper amount as dictated by Council resolution and a detailed listing of the information requested, the staff will comply with your request.”

The requester subsequently resubmitted the request to the Municipality. The Municipality once again responded by returning the requester’s cheque for \$5.00 and reiterating the original response as outlined above.

The requester (now the appellant) appealed the absence of a decision with respect to his request for access to information to this office, which opened Appeal MA10-48 to address the matter as a deemed refusal.

During the intake stage of the appeal, the Municipality issued a decision in response to the appellant’s request which indicated:

1. Records from August 2009 to January 2010: the Municipality will grant you partial access to these records, exempting any information which is considered personal and private and is covered by Section 14 of the *Act*, and in particular, information which constitutes an invasion of privacy and is exempted under Section 14(3) of the *Act*. This information would include specific salary and wage amounts that are paid to contract and permanent employees of the Municipality.

2. Records from February 2010 to December 2010: the Municipality acknowledges your request for continuing access pursuant to section 17(3) of the *Act* and agrees to grant you partial access to these records under the terms and conditions outlined above.

Section 45(1) of the *Act* authorizes charging fees in connection with requests for access to municipally-held information. In this case, the fees that will be charged total \$65 per month for the records, and are payable when the records are picked up at the Municipality's office.

As this decision resolved the issue of the deemed refusal, Appeal MA10-48 was closed by this office.

The requester (now the appellant) appealed the Municipality's second access and fee decision to this office and Appeal MA10-48-2 was opened.

During mediation, the appellant confirmed that he disputes the reasonableness of the fee, the denial of his fee waiver request and the severances that were applied to the responsive records. The Municipality subsequently disclosed six pages out of the 22 pages from the report prepared for the month of April, 2010, at no charge to the appellant. The Municipality later issued a revised decision and disclosed a copy of the report for August 2009, with severances to the personal information, at no charge to the appellant, and stated that:

1. Records from August 2009 to April 2010: The Municipality will grant you partial access to these records (August's without charge, which is attached), exempting any information which is considered personal and private and is covered by Section 14 of the *Act*, and in particular, information which constitutes an invasion of privacy and is exempted under Section 14(3) of the *Act*. This information would include the names of employees who have received expense reimbursements (though not the amounts of those reimbursements and what they were for) and specific salary and wage amounts that are paid to part-time and casual employees of the Municipality.
2. Records from April 2010 to December 2010: The Municipality acknowledges your request for continuing access pursuant to section 17(3) of the *Act* and agrees to grant you partial access to these records under the terms and conditions outlined above.
3. The records will be made available to you on the last Wednesday of each month (the date that Council meets) in months where a meeting is occurring.

In this decision, the Municipality also provided a breakdown of the revised fee, charging \$60.00 for each month and \$0.20 per page for photocopying, with the exception of August for which fees were waived and April (in which a sample of the month was disclosed to the appellant).

In turn, the appellant advised that he does not take issue with the schedule issued by the Municipality in response to his request for continuing access. The appellant wishes to proceed with the appeal for a determination of the issue of access to the records severed under section 14(1) of the *Act*, as well as the issues of the reasonableness of the fee and denial of the fee waiver request. The appellant took the position that payment of the fee will cause it financial hardship, pursuant to section 45(4)(b) of the *Act*.

I sought and received representations from the Municipality and the appellant, which were shared in accordance with section 7 of the *IPC Code of Procedure*. I also sought and received further representations from the Municipality by way of reply, which were not shared with the appellant.

RECORDS:

The records at issue consist of the undisclosed portions of various voucher and adjustment reports for Council for the months of August 2009 through April 2010.

DISCUSSION:

PERSONAL INFORMATION

The personal privacy exemption in section 14(1) of the *Act* can only apply to information that qualifies as “personal information”. In order to determine whether section 14(1) of the *Act* applies, it is necessary to decide whether the record contains “personal information” and, if so, to whom it relates. That term is defined in section 2(1) as follows:

“personal information” means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,

- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225].

Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225 and MO-2344].

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

The Municipality submits that the records contain specific dollar amounts taken from its ledgers citing the amounts paid on a monthly basis to its employees as salary. In addition, it argues that because the community is very small, some individual employees can be identified by their job title and for that reason, the Municipality has also denied access to that information. The Municipality takes the position that this information qualifies as the personal information of its employees. Finally, the Municipality submits that it has disclosed the amounts paid for the expenses of its employees, as well as the reason for the expense, but has not disclosed the individual employee to whom each expense relates because that information qualifies as the employee's personal information.

The appellant argues that the Municipality has improperly severed the names of its employees from the voucher report entries relating to expenses. He argues that this information cannot qualify as personal information within the meaning of the definition of that term in section 2(1)

as the employees incur these expenses in the course of their professional or employment responsibilities, and not in their personal capacities.

With respect to the salary information in the records that relates to the Municipality's regular or permanent part-time employees, the appellant indicates that the organization he represents "never expected disclosure of monthly or yearly salary amounts" and that "it is the manner in which the public business is being conducted which is of concern not the income of individuals." These statements lead me to the conclusion that the appellant is not seeking access to the actual salary amounts of individual employees of the Municipality, but that he is interested in obtaining access to information relating to their expenses, and more particularly, the amounts paid to contractors retained by the Municipality for specific work to be performed.

In Order M-106, former Assistant Commissioner Tom Mitchinson determined that the names of employees and fee-for-service providers who were engaged by an institution and which appeared on an "accounts report" similar to the record at issue in this appeal did not constitute the personal information of these individuals for the purposes of the *Act*. He held that:

The portions of the record which remain at issue in this appeal are the names of the affected persons who received cheques from the Board and appear on the "accounts report". Most of these individuals are Board employees and co-op students, and the cheques represent reimbursement for expenses incurred by these individuals in their employment capacity. The remaining names on the list are those of individuals who provided services to the Board on a fee-for-service basis, and the cheques represent payments made to these individuals during the period covered by the "accounts report".

It has been established in a number of previous orders that information provided by an individual in a professional capacity or in the execution of employment responsibilities is not "personal information" (Orders M-71, M-74, P-326, P-328, P-329, P-329, P-333 and P-377). In my view, similar considerations apply in this appeal, and I find that information about payments made to reimburse individuals for expenses incurred during the course of carrying out their duties as public employees or co-op students does not qualify as personal information for the purposes of the *Act*. Similarly, I find that information about payments made to individuals who have provided services to the Board on a fee-for-service basis does not qualify as the personal information of these individuals for the purposes of the *Act*.

Because I have found that the records do not contain any personal information, it is not necessary for me to consider the possible application of section 14(1) of the *Act*.

I adopt the findings of the former Assistant Commissioner. Accordingly, I find that the names of the individual employees and fee-for-service providers included in the voucher report at issue in the present appeal are not the personal information of these individuals as they represent the payment of expense claims relating directly to their employment or retention for some purpose

by the Municipality. Because this information does not constitute personal information within the meaning of that term in section 2(1), it cannot qualify for exemption under section 14(1). As no other exemptions have been claimed to apply to this information, I will order that it be disclosed to the appellant.

FEES

The Municipality provided the appellant with a fee estimate of \$60 for providing access to the responsive records for each month during the period of the request, August 2009 to December 2010, with the exception of August 2009 and April 2010 which have already been provided, in severed form. In addition, the fee estimate indicated that a fee of \$0.20 per page would be charged for each responsive record disclosed. The fee was based primarily on the time required to sever information that is non-responsive or exempt from disclosure from each of the voucher reports. The Municipality indicates that because it has performed the necessary searches and the severing of exempt information contained in the voucher reports for August 2009 and April 2010, it can accurately estimate the time required to perform the necessary severing of the records and to locate the actual records themselves.

General principles

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, 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.

Section 45(1)(b) includes time for

- severing a record [Order P-4]
- a person running reports from a computer system [Order M-1083]

Generally, this office has accepted that it takes two minutes to sever a page that requires multiple severances [Orders MO-1169, PO-1721, PO-1834, PO-1990].

Findings

I have reviewed the representations of the Municipality and the appellant, along with the records themselves to determine whether the Municipality's fee estimate of \$60 per month, plus photocopying charges of \$0.20 per page is reasonable. In my view, the amount claimed by the Municipality for the preparation of the record, including the severing of information relating to employee salaries that the appellant indicates he does not seek, is reasonable.

For example, the voucher report for the month of March 2010 is 44 pages long. The Municipality is allowed to charge for the severing of this document in order to remove non-responsive information relating to employee salaries from it. As indicated above, this office has generally accepted a standard of two minutes per page for the severing of a record or, in the case of those relating to March 2010, 88 minutes. Some months there are greater or fewer records to be severed but, based on my review of them, an average of approximately 30 pages would seem appropriate. I find that the Municipality is required under section 45(1) to charge a fee for the preparation of the records and that the fee of \$60 per month, plus photocopying charges of \$0.20 per page is reasonable and in keeping with the requirements of section 45(1) of the *Act*.

FEE WAIVER

General principles

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 appellant submits that the organization which he represents is a non-profit association comprised of approximately 200 households in the community. The fee charged for each member is \$10 per household per year, or approximately \$2000 per year. He goes on to indicate that since its inception in June 2009, the association has published three newsletters at a cost of \$500 each that are available to all residents of the Municipality and has also sponsored an all-candidates meeting prior to the recent municipal elections at a cost of \$250.

As a result, the appellant argues that the payment of \$60 per month, or \$720 per year, plus photocopying charges, will result in the association being unable to gain access to the records because it is unaffordable, thereby raising the application of the factor described in section 45(4)(b) of the *Act*.

The Municipality counters this argument by pointing out that it is a small municipality with “very limited staff and resources”. It argues that waiving the fee for this ongoing request that involves a substantial number of records on a monthly basis will cause it financial hardship. The fact that the appellant represents a non-profit organization ought not to give rise to an automatic fee waiver, according to the Municipality.

For section 45(4)(b) to apply, the requester must provide some evidence regarding his or her financial situation, including information about income, expenses, assets and liabilities [Orders M-914, P-591, P-700, P-1142, P-1365 and P-1393].

Based on the Municipality and the appellant’s submissions and my own review of the records and past decisions of this office, I find that the appellant has established a *prima facie* case in favour of a finding that a fee waiver in this situation is warranted, at least with respect to the preparation charges. In my view, the appellant and the organization he represents are financially capable of covering the photocopying charges incurred each month.

I further find that the organization which the appellant represents clearly has limited financial means, but it represents a substantially large group of residents within the Municipality. I also note that in his representations, the appellant alludes to the existence of a tentative arrangement between the association and the Municipality’s Clerk for the granting of access to the voucher accounts. While I acknowledge that this agreement may never have been finalized, that proposal provides a template for a sensible and appropriate accommodation by the Municipality which will result in the scrutiny desired by the appellant being possible. Providing that the appellant and the organization he represents are not interested in obtaining access to the salary information contained in the voucher accounts, disclosure in accordance with that proposal will also protect the privacy interests of the Municipality’s employees.

A finding that a fee waiver is warranted does not end the matter, however. For a fee waiver to be granted under section 45(4), it must be “fair and equitable” in the circumstances. Relevant factors in deciding whether or not a fee waiver is “fair and equitable” may include:

- the manner in which the institution responded to the request;
- whether the institution worked constructively with the requester to narrow and/or clarify the request;
- whether the institution provided any records to the requester free of charge;
- whether the requester worked constructively with the institution to narrow the scope of the request;
- whether the request involves a large number of records;
- whether the requester has advanced a compromise solution which would reduce costs; and
- whether the waiver of the fee would shift an unreasonable burden of the cost from the appellant to the institution.

[Orders M-166, M-408 and PO-1953-F]

In the present appeal, I am of the view that granting of a fee waiver in this case would shift the burden of the cost to the Municipality's taxpayers from the appellant and the organization which he represents. However, I find that such a shift, involving the sum of \$60 per month is not unreasonable. As suggested above, I am satisfied that the adoption of the appellant's proposed compromise solution involving access, which is outlined in his representations, is a factor favouring the granting of a fee waiver on the basis that it is fair and equitable to do so in the circumstances. Accordingly, I find that it is fair and equitable to grant the fee waiver in this appeal.

ORDER:

1. I order the Municipality to disclose to the appellant all of the responsive information contained in the voucher reports for the period from April 2009 to December 2010 by providing him with a copy by **March 4, 2011, but not before February 25, 2011**. The information to be included in the disclosure does not include information relating to the salaries and wages paid to the Municipality's employees which falls outside the scope of the appellant's request.
2. I uphold the Municipality's decision to charge a fee of \$60 per month, plus photocopying charges.
3. I order the Municipality to waive the fee relating only to the record preparation charge of \$60 per month. I do not order that the fee for photocopying charges of \$0.20 per page be waived.

Original signed by: _____
Donald Hale
Adjudicator

January 28, 2011