



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

# **ORDER MO-2553**

**Appeal MA10-93-2**

**Algoma Public Health**



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## **NATURE OF THE APPEAL:**

Algoma Public Health (Algoma) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the most recent inspection reports relating to 20 identified restaurants. The requester is a reporter with a local newspaper. In its initial decision letter, Algoma advised the requester that it estimated the cost of its search as being \$400-\$500. Earlier, Algoma had advised the requester that his fee waiver request was also denied.

The requester, now the appellant, appealed Algoma's fee estimate and its decision not to grant a fee waiver. In a second fee estimate provided during the mediation stage of the appeal, Algoma provided the appellant with a revised fee estimate in the amount of \$325, broken down as follows:

- 5 hours to complete the search \$150.00
- photocopying at \$.20 per page 30.00
- 4 hours to complete severances to the records 120.00
- Shipping costs, if required 25.00

The appellant advised that he wished to continue with his appeal, however.

Mediation did not resolve the issues and the file was moved to the adjudication stage of the appeal. I provided Algoma with a Notice of Inquiry setting out the facts and issues in the appeal and seeking its representations. Algoma provided me with submissions in response. Because of the manner in which I will address the issues in this matter, it was not necessary for me to seek the representations of the appellant on the fee estimate issues. However, I did ask the appellant to provide representations on the fee waiver issue and received submissions from him.

## **DISCUSSION:**

### **FEE ESTIMATE**

#### **General principles**

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 section 6 of Regulation 823, which 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.

### **Algoma's representations**

In its representations, Algoma again reiterated that it "is not funded for record searches of any kind." It stated that inspection reports of all descriptions for the 20 restaurants contained in the request, including the food inspection reports specified in the request, "stack approximately 2 feet high." The search estimate provided to the appellant includes the time required to segregate the information sought relating solely to food inspection reports from other types of inspection reports that it undertakes. Algoma also points out that some of the responsive records were maintained in its Blind River office and have been shipped to its Sault Ste. Marie office at its own unattributed cost.

Algoma summarizes its representations in the following way:

. . . the costs of the record retrieval may not be significant but it is the principle of the matter that concerns [us] as we are not funded for any searches. Algoma Public Health has an obligation to the municipalities we serve as well as the Public Health Division of the Ministry Health and Long-term Care to be as cost efficient as we can while meeting the standards for health protection, prevention and promotion as prescribed.

We do not believe this is a significant cost issue for [the newspaper which employs the appellant] and respectfully request that the fee that will be incurred not be waived by the Commission.

### **Findings**

As noted above, 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 the present case, the appellant was not advised whether or not he would obtain access to all of part of the records if he paid the fee and was not told which, if any, exemptions under the *Act* might apply to the responsive records.

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]. I find that neither of Algoma's two decision letters, nor its representations, provided a sufficiently detailed breakdown of the fee

and how it was calculated. Although Algoma indicates that “two feet” of records would have to be searched, it has not provided any indication of why such a search would take 5 hours and what kind of information is included in each of the 20 files to be reviewed. I note that the search involves only 20 restaurants and seeks access to the food inspection reports only. Algoma has not satisfied me that it requires 5 hours to extract this very limited information from its file. In the absence of more detailed information about the searches required, I will disallow any search fee whatsoever.

Similarly, Algoma has failed to demonstrate why it is required to sever the responsive records and why this exercise would require four hours of staff time. There is no indication that exemptions have been claimed for some of the information in the inspection reports or that non-responsive information would have to be deleted from the copies provided to the appellant. Without that information, I am unable to uphold Algoma’s decision respecting this aspect of the fee estimate.

The cost of shipping that is contemplated as recoverable by the *Act* and the regulations includes the cost of shipping the records to the requester, not the unascertained internal cost of procuring the records from one of its locations away from Sault Ste. Marie. As a result, I cannot uphold this aspect of the fee either.

Algoma estimates that the responsive records will total approximately 150 pages and has, accordingly, charged a fee of \$30 for this item at \$.20 per page. The appellant takes the position that this portion of the institution’s fee estimate is “fair.” In my view, the photocopying charge is in accordance with the requirements of the *Act* and the Regulation and I uphold this aspect of the fee estimate. I note that if the actual number of responsive records identified is less than or exceeds 150 pages, Algoma may adjust this amount accordingly.

To summarize, I uphold only Algoma’s fee respecting photocopying. I do not uphold the remaining fee, however, for the reasons set forth above.

#### **FEE WAIVER**

I have only upheld Algoma’s fee estimate as it relates to photocopying charges. The appellant agrees that Algoma is entitled to charge such a fee and that it is “fair.” As a result, it is not necessary for me to consider whether the appellant is entitled to a fee waiver of this portion of the fee. Since I have not upheld the remaining aspects of Algoma’s fee estimate, it is not necessary for me to evaluate whether Algoma’s decision not to waive these portions of the fee was in accordance with the *Act* and the Regulations.

**ORDER:**

1. I uphold Algoma's fee estimate for photocopying costs.
2. I do not uphold the other aspects of Algoma's fee estimate.
3. Because of the manner in which I have addressed the fee estimate issue, it is not necessary for me to consider whether Algoma's fee waiver decision was in accordance with its obligations under the *Act*.

Original signed by: \_\_\_\_\_  
Donald Hale  
Adjudicator

\_\_\_\_\_ October 8, 2010