

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER MO-2687

Appeal MA11-161

Town of Carleton Place

January 12, 2012

Summary: The Town of Carleton Place received a request under the *Municipal Freedom of Information and Protection of Privacy Act* for access to documents related to a specific groundwater monitoring study. This order partially upholds the town's fee for the responsive report.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, s. 45(1).

OVERVIEW:

[1] The Town of Carleton Place (the town) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

All documents related to a groundwater monitoring study of [address] and surrounding area in the town of Carleton Place.

[2] The town issued an interim access decision containing a fee estimate of \$4,649.03. The town subsequently issued a revised fee estimate that consisted of \$1,343.11 for documents excluding e-mails and \$2,898.43 for e-mails.

[3] Consequently, the requester narrowed the request to a copy of the groundwater monitoring report. In response, the town issued a revised fee estimate of \$920.49.

[4] The requester, now the appellant, appealed the town's decision.

[5] During the course of mediation, the appellant confirmed that he was appealing the amount of the fee estimate of \$920.49. The appellant also clarified that he is not pursuing a fee waiver at this time.

[6] Mediation was not successful and the appeal was moved to the adjudication stage of the appeals process where an adjudicator conducts an inquiry under the *Act*. I sought and received representations from the town and the appellant, which were shared in accordance with *Practice Direction 7* of the *IPC Code of Procedure*. In this order, I partially uphold the town's fee for the responsive report.

DISCUSSION:

Should the fee estimate be upheld?

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

[8] 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].

[9] 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].

[10] 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].

[11] 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].

[12] 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.

[13] 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.

[14] 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.

[15] The town states in estimating its 19.5 hours of search and preparation time it included:

<u>Search</u> for a verifying status (draft or final) of relevant files from Fall 2009 to present	2.5 hours
Correspondence/meeting time with appellant/provision of fee estimates	5.5 hours

[16] The town states that it revised the initial fee estimate for preparation for disclosure under section 45(1)(b) to reflect two minutes for each page regarding severances, as follows:

Review "Supplemental Delineation of PCE [Perchloroethylene]" and delete all included private property information 347 pages @ 2 minutes each	11.5 hours
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[17] The town summarized its fee estimate as follows:

Search and preparation time <u>19.5 hours</u> @ \$30.00 per/hour	\$ 585.00
Photocopying of documents 347 pages @ .20 per page	<u>69.40</u>
Sub-Total	\$ 654.40
<u>HST @ 13%</u>	<u>85.07</u>
Total Amount	\$739.47

[18] The appellant states that a town manager told him that the responsive record, the soil vapour report, is in the town's files. Therefore, he submits that the search time of 2.5 hours is very excessive. He also disputes that the record requires redaction because privately-owned properties are referred to in the document, as all the information is public record. The appellant also disputes the fee of 5.5 hours for "correspondence/meeting time with appellant/provision of fee estimates," as "inadmissible fees". He states that even if those fees are found to be admissible, they are excessive as he only met once for 15 minutes with a town manager and the town clerk.

[19] The appellant suggests one-half hour (30 minutes) of search time, plus photocopying fees, are the only reasonable costs related to taking a document from a file cabinet and providing a copy to him.

[20] In reply, the town states that the search time of 2.5 hours "included staff time for searching and for verifying relevant files from the Fall of 2009 to the present." Regarding the 5.5 hours of search time, the town states that "staff time was included in the estimate of fees in order to determine whether or not the document of interest to

the appellant contained any personal information regarding the private properties which should not be released under the *Act*." The town the states that:

In conclusion, considerable staff time as reflected in the quote has already been spent on this request. It should be noted, for the record, that not one but two separate meetings were held with the applicant by municipal staff.

Once a final decision has been rendered by the IPC, regarding the estimate of fees and the appellant forwards the same, the requested document will be provided to the applicant.

[21] In surreply, the appellant repeated his initial representations.

Analysis/Findings

[22] The town was asked in the Notice of inquiry whether it based its search fee on the actual work done to respond to the request, and if not, whether it:

- sought the advice of an individual who is familiar with the type and contents of the requested records? If so, who is the individual, and to what extent is he or she familiar with the records?
- based its decision on a representative sample of the records? If so, how was the sample determined, and what records were identified?

[23] The town's representations do not respond to these questions about the basis for the town's search fee.

[24] The town provided this office in April, 2011, with a record dated November 26, 2009, entitled "Supplemental Delineation of PCE in the Vicinity of [address], Carleton Place, Final Report" (the Report). The town has advised that only this one record is what is responsive to the request. Although the town has conducted an actual search and has produced the responsive record, the town representations refer to the fee of \$739.47 as a fee estimate, not the actual fee to process the request.

[25] The town has indicated that it estimates 2.5 hours to search for and verify "relevant files from the Fall of 2009 to the present." The town has not indicated how much of this time was spent to locate the one responsive record. The town has provided conflicting information as to the reasons it has claimed an additional search fee of 5.5 hours at \$30.00 per hour. It has indicated that this fee represents time spent for "correspondence/meeting time with appellant/provision of fee estimates". It has also indicated that this fee is for deciding whether or not to claim the personal privacy exemption.

[26] As set out above, section 45(1)(a) of the *Act* is quite specific as to the search fees that may be charged to a requester, which are comprised of the cost of every hour of manual search required to locate a record. Accordingly, the town is not allowed to claim 5.5 hours for "correspondence/meeting time with appellant/provision of fee estimates." This fee for time spent responding to the requester is not allowable as a search fee under section 45(1)(a) of the *Act* and I will disallow this fee of 5.5 hours. ¹

[27] The town also indicated that the 5.5 hours of search time was incurred in order to determine whether or not the record contained any personal information regarding the private properties which should not be released. The record does not contain the personal information of the appellant.

[28] Section 45(1)(b) allows fees to be charged for the cost of preparing a record for disclosure. This section allows an institution to claim preparation time for:

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

[29] Section 45(1)(b) does not include time for:

- deciding whether or not to claim an exemption [Order P-4, M-376, P-1536]
- identifying records requiring severing [MO-1380]
- identifying and preparing records requiring third party notice [MO-1380]
- removing paper clips, tape and staples and packaging records for shipment [Order PO-2574]
- transporting records to the mailroom or arranging for courier service [Order P-4]
- assembling information and proofing data [Order M-1083]
- photocopying [Orders P-184 and P-890]
- preparing an index of records or a decision letter [P-741, P-1536]
- re-filing and re-storing records to their original state after they have been reviewed and copied [PO-2574]

¹ Orders P-4, M-376 and P-1536.

- preparing a record for disclosure that contains the requester's personal information [Regulation 823, section 6.1].

[30] The fee for time spent for deciding whether or not to claim an exemption is not allowable as either a search fee or a preparation fee under section 45(1) of the *Act*.² Accordingly, I will also disallow this fee of 5.5 hours at \$30.00 per hour for determining whether or not the record contained any personal information.

[31] The appellant made his request on February 10, 2011 and sought "All documents related to a groundwater monitoring study of [address] and surrounding area in the town of Carleton Place."

[32] During the request stage, the appellant narrowed the scope of his request to seek only a copy of the groundwater monitoring report. This report, the responsive record, is dated November 26, 2009. The town argues that its search fee of 2.5 hours was to reflect a search for "... a verifying status (draft or final) of relevant files from Fall 2009 to present."

[33] As stated above, the town has not provided me with information as to the actual search time to locate the responsive record, nor why it needed to search for records dated after November 2009. As the record is a 12 page report with attachments, I agree with the appellant that a search fee of 30 minutes to locate one responsive record is reasonable in the circumstances of this appeal.

[34] Generally, this office has accepted that it takes two minutes to sever a page that requires multiple severances.³ The record has already been severed by the town. There appears to be 30 pages that contain severances. Accordingly I will allow the town, two minutes per page for 30 pages for a total of 60 minutes.

[35] Section 45(1)(c) includes the cost of photocopies. The town has charged \$69.40 for photocopying 347 pages at 20 cents per page. The record is 143 pages. Therefore, I will allow a photocopying fee for 143 pages at 20 cents per page under section 45(1)(c).

[36] The town has also sought to recover HST from the appellant on the search and preparation time and the photocopying costs. Although section 45(1)(e) is intended to cover general administrative costs resulting from a request, these costs are similar in nature to those listed in paragraphs (a) through (d) of section 45(1), but not specifically mentioned [Order MO-1380].

² Orders P-4, M-376 and P-1536.

³ Orders MO-1169, PO-1721, PO-1834 and PO-1990.

[37] Section 45(1)(e) does not include:

- time for responding to the requester [Order MO-1380]
- time for responding to this office during the course of an appeal [Order MO-1380]
- legal costs associated with the request [Order MO-1380]
- comparing records in a request with those in another request for consistency [MO-1532]
- GST [MO-2274]
- costs, even if invoiced, that would not have been incurred had the request been processed by the institution's staff [P-1536]
- coordinating a search for records [PO-1943]

[38] Section 45(1) of the *Act* and Regulation 823 lists the items that can be charged by an institution to respond to a request for access. HST is not a fee authorized by the *Act* and Regulation 823.⁴ I will disallow the HST charge to the appellant.

Conclusion

[39] In this appeal, I have not upheld the town's fee estimate. Instead, as the responsive record has already been located by the town, I am allowing the following fee to be charged to the appellant:

Search fee (30 minutes @ \$30.00 per/hour)	\$ 15.00
Preparation fee (two minutes per page for 30 pages for a total of 60 minutes @ \$30.00 per/hour)	30.00
Photocopying fee (143 pages @ .20 per page)	<u>28.60</u>
Total Fee	<u>\$ 73.60</u>

⁴ Orders M-706, M-679, M-236 and MO-2274.

ORDER:

1. I partially uphold the town's fee for search and preparation time and photocopying costs for a total amount of **\$73.60**.
2. I do not uphold the town's fee for HST charges.
3. I order the town to issue a final access decision to the appellant, with a copy to me, no later than **February 9, 2012**.

Original signed by: _____
Diane Smith
Adjudicator

_____ January 12, 2012