Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-2784

Appeal MA11-538

City of Toronto

August 29, 2012

Summary: The City of Toronto received a request seeking information relating to cyclist inflicted pedestrian injuries on Toronto sidewalks. The city issued an interim fee decision in the amount of $4,200.00. The appellant sought a fee waiver. This order upholds the city's interim access decision and the city's search fee estimate and does not waive this fee.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 45(1), 45(4)(b) and (c).

OVERVIEW:

[1] The City of Toronto (the city) received a request pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*) for the following information:

> All cyclist inflicted pedestrian injuries on Toronto sidewalks (front of type addresses as well) that Toronto EMS [Emergency Medical Services] responded to and treated in past 15 years. Please include: location, age, sex, types of injuries, killed and pronounced on scene or at hospital ER, and if known post admission = transport to hospital or cancellation.

Re age + sex related to hip # / injuries inflicted on seniors will be needed for later follow-up or outcomes.

In the public's interest.

[2] During the request stage, the requester spoke with the city and revised his request to include only the following:

- Addresses closest to the sidewalk (in front of) where the cyclist-inflicted injuries occurred
- Dates of incidents
- Categories of injuries, particularly hip injuries
- Age of patient
- Sex of patient
- Hospitals where patients were transported to
- # of death occurred on sidewalk
- # pronounced death [sic] in transit, in hospital, and after leaving the hospital

You prefer to have information covering 10 to 15 years, but will accept 7 years if that is all that is available

[3] The city issued an interim fee decision advising the following:

We asked staff of the Emergency Medical Services (EMS) Division to search for records responsive to your request. This decision reflects the results of their search.

EMS staff has advised that the requested information is not readily available. EMS does not track specific information as requested. Some information is not available and some are contained in various reports (including the Ambulance Call Reports, dispatcher's records, fall cards, traumatic injuries repots, etc.), and these records are stored in various office and offsite storage locations. To produce each record, each box would have to be retrieved from storage, and each patient care record contained in each envelope in each box would need to be retrieved, searched, and photocopied. Therefore it would require a considerable

> amount of time and resources to search and gather the information as per your request.
>
> Also, staff indicated that only limited information is available in electronic format. Furthermore, with respect to records availability, although some records may be kept up to 7 years, the retention period for these records is 5 years.

[4] The city further stated the following:

> In order to respond to your request, it is estimated that it would take staff approximately 20 days or 140 hours to search for hard copy records which may be responsive to your request; and subsequently, additional time (# of hours is unknown at this time as it depends on how many pages of responsive records are found) will be needed to identify specific information from the documents which may be responsive.

[5] The city provided a search fee estimate of $4,200.00 and requested a 50% deposit of $2,100.00.

[6] The requester, now the appellant, appealed the city's interim fee decision.

[7] During mediation, the appellant made a fee waiver request to the city pursuant to sections 45(4)(b) and (c) of the *Act*. The city issued a further decision denying the appellant's fee waiver request. The appellant confirmed with the mediator that he takes issue with the denial of the fee waiver request, as well as the amount of the fee.

[8] During mediation, the city set out in an email to the appellant a further explanation of the records that are responsive and what would be involved in the search. Upon receipt of this explanation, the appellant confirmed with the mediator that reasonableness of the fee is at issue as he believes there should be more records in an electronic format, thereby reducing the search time component of the fee.

[9] As the city did not include an interim access decision as part of its fee estimate decision letter, the adequacy of the city's decision letter is also an issue in this appeal.

[10] As no further mediation was possible, the file was transferred to the adjudication stage where an adjudicator conducts an inquiry under the *Act*. During my inquiry, I sought and received representations from the appellant and the city. Representations were exchanged in accordance with the section 7 of the IPC's *Code of Procedure* and *Practice Direction 7*.

[11] In this order, I uphold the city's interim access decision as adequate. I also uphold the city's search fee estimate and its decision not to waive the fee.

ISSUES:

A. Is the city's interim access decision adequate?

B. Should the fee estimate be upheld?

C. Should the fee be waived?

DISCUSSION:

A. Is the city's interim access decision adequate?

[12] Where the fee is $100 or more, the institution may choose to do all the work necessary to respond to the request at the outset. If so, it must issue a final access decision. Alternatively, the institution may choose *not* to do all of the work necessary to respond to the request, initially. In this case, it must issue an interim access decision, together with a fee estimate [Order MO-1699].

[13] Also, where the fee is $100 or more, the institution may require the requester to pay a deposit equal to 50% of the estimate before the institution takes any further steps to respond to the request (see section 7 of Regulation 823).

[14] In circumstances where the institution requires an extension of time to respond to the access request and it has decided to issue an interim access decision, it is advisable to set out the number of additional days that the institution will require and the reasons for the time extension in the interim access decision [Order PO-2634].

[15] The purpose of the fee estimate, interim access decision and deposit process is to provide the requester with sufficient information to make an informed decision as to whether or not to pay the fee and pursue access, while protecting the institution from expending undue time and resources on processing a request that may ultimately be abandoned [Orders MO-1699 and PO-2634].

[16] The interim decision process also assists requesters to decide whether to narrow the scope of a request in order to reduce the fees [Order MO-1520-I].

[17] An interim access decision is not a final decision on access, and the institution should make this clear to the requester.

[18] This office may review an institution's interim access decision and determine whether it contains the necessary elements. This office will not determine whether or not the exemptions or other provisions the institution cites actually apply to the records until the institution issues a final access decision.

[19] The city states that on April 11, 2012 it issued an interim decision to the appellant, along with a representative sample of the responsive records. It submits that its interim access decision is adequate as its fee estimate and interim access decision letters included the following elements:

- a description of the records;
- an indication of what exemptions the institution might rely on to refuse access;
- an estimate of the extent to which access is likely to be granted;
- name and position of the institution decision-maker;
- a statement that the decision may be appealed; and
- a statement that the requester may ask the institution to waive all or part of the fee.

[20] In preparing the interim access decision and obtaining a representative sample of responsive records, the city states that it sought the advice and assistance of the Commander of Professional Services from the EMS, who has detailed and in-depth knowledge of the records sought. The city states that the process used by EMS staff to determine a representative sample of the responsive records for a four month period was as follows:

> 1. The EMS staff wrote a query in the Computer Aided Dispatch (CAD) database to identify dispatch records that may be responsive to the request. This query looked for all entries in the <Comments> field that include the words, "bicycle", "bike" or "cyclist". The parameters were limited to these three words, as using words like "sidewalk", "pedestrian", "curb" etc., yielded an unmanageable number of records. The query, … yielded approximately 1200 records for the defined period.
>
> 2. Each record was produced in PDF and had to be manually read to determine a subset of records which may be responsive to the request. Reading through these records yielded 17 records which may be responsive.
>
> 3. Based on the results, a manual search was conducted and 17 Ambulance Dispatch Records were recovered for review.
>
> 4. Staff then needed to recover, where possible, the Ambulance Call Reports corresponding to the 17 Ambulance Dispatch Records. All 2008

> Ambulance Call Reports are securely stored in the City's records centre. As such, a staff member had to request the boxes and have them placed in an office at the storage facility. The EMS staff member then travelled to the storage location. Each record had to be located and recovered from its storage box, photocopied and the original returned to the proper location in the box.
>
> 5. Each recovered Ambulance Call Report was manually read in order to determine if it was responsive to the request.
>
> Although staff of EMS located 60 pages of responsive records for the 4 month period, due to the extensive severing work required, only a one week period of the records was provided to the appellant.

[21] The appellant states that the interim access decision is inadequate since he is still expecting records regarding all of the trauma inflicted on pedestrians on sidewalks who were struck by cyclists riding on the sidewalk. He states that he did not agree to omit records related to hip injuries, nor did he ask for records about cyclists' injuries and deaths while sharing the road.

Analysis/Findings

[22] The interim access decision repeats the information set out above that the appellant is requesting:

- addresses closest to the sidewalk (in front of) where the cyclist-inflicted injuries occurred
- dates of incidents
- categories of injuries, particularly hip injuries
- age of patient
- sex of patient
- hospitals where patients were transported to
- # of death occurred on sidewalk
- # of pronounced death in transit, in hospital, and after leaving the hospital

[23] The interim access decision states:

> … We asked staff of Toronto Emergency Medical Services (EMS) Division to search the requested records and provide a sample of the records found. Please be advised that this is an interim decision that reflects the results of their search for sample records.
>
> <u>Sample Records</u>

> Enclosed are 16 pages of sample Ambulance Call Reports and Incident Summary Reports, representing a one week period, from May 24 to May 31, 2008 inclusive.
>
> Interim Decision
> Access is granted in part to the Ambulance Call Report records under the *Personal Health Information Protection Act* (*PHIPA*). Access is denied to the remaining parts of these records, where personal medical & health information have been removed.
>
> Access is granted in part to the Incident Summary Report records. Access is denied to remaining parts of these records under Section 14 of *MFIPPA*. Section 14(1) has been relied upon to sever the personal information of individuals as it has been determined that the disclosure of this information would constitute an unjustified invasion of privacy.
>
> Access to the sample records
> A copy of the severed records is enclosed.

[24] The interim access decision is based on a review of a representative sample of the requested records and is based on the advice of an individual who is familiar with the type and content of the records. The city's fee estimate of November 21, 2011 included a statement that the appellant could ask for a fee waiver. The interim access decision contained the following elements:

- a description of the records
- an indication of what exemptions or other provisions the institution might rely on to refuse access
- an estimate of the extent to which access is likely to be granted
- name and position of the institution decision-maker
- a statement that the decision may be appealed[1]

[25] Based on my review of the interim access decision, I find that it is adequate as it contains all the necessary elements required to give the appellant sufficient information to enable him to make an informed decision as to whether to pay the fee deposit. I also disagree with the appellant that in rendering its decision that the city altered the scope of the request by excluding records related to hip injuries or including records

[1] Orders 81, MO-1479, MO-1614 and PO-2634.

about cyclists' injuries and deaths while sharing the road. The city's interim access decision specifically includes hip injuries and makes no mention of including records about roadway injuries or deaths.

B. Should the fee estimate be upheld?

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

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

[28] 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].

[29] 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].

[30] 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].

[31] 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].

[32] 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.

[33] 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.

[34] 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.

[35] The city only provided the appellant with an estimate to cover the cost of the search for the responsive records. It did not provide the appellant with an estimate to prepare or photocopy the records. As such, I will only determine in this order whether the city's fee estimate relating strictly to the search element has been made in accordance with the *Act* and Regulation 823, as set out above.

[36] The city states that initially, it did not base the search fee estimate on actual work done to locate the responsive records. Instead it relied on the expert knowledge of two EMS staff, namely the Commander Professional Standards and Superintendent Professional Standards, as set out above.

[37] As the appellant maintained that the records should be readily available on the city's computer systems, the city had EMS confirm that approximately 80% of the records are electronic, but that only covers the most recent 18 month period. The city states that all other records are only available in hard copy, most of which are stored off-site. The city states:

> For those records that are electronic, they are still not easily identifiable as "cyclist inflicted pedestrian injuries" is not coded into the EMS database. This fact has been reiterated many times to the appellant. EMS staff offered to sit down with the appellant to discuss the request and steps necessary to locate the records, however, the appellant ultimately declined.
>
> During mediation, the city agreed to search for a representative sample of the records, which consist of dispatch records, incident summary reports and Emergency Call Reports, and then issue an interim decision. In order to locate these records, the city performed steps 1 - 5 as noted [above]. The total time to search, recover and review these records for a 4 month period was 15.25 hours. To locate records for a 7 year period for example, the search time would amount to approximately 170 hours. The city's original fee estimate was based on 140 hours of search time. This does not include the time required to sever the records, which would be dependent on the number of responsive records located. The time taken for each step is outlined below:

> 1. Writing, testing, refining and modifying the query to achieve the maximum usable results - 6.75 hours;[2]
>
> 2. Reading through the records (276 pages) to determine a subset of records that may be responsive - 2.5 hours;
>
> 3. To locate the 17 records - 1.5 hours;
>
> 4. To search and recover the matching Ambulance Call Reports - 4 hours. This does not include time taken to retrieve or re-file storage boxes; and
>
> 5. Reading the Ambulance Call Reports to determine which were responsive - 0.5 hours.

[38] The appellant did not respond directly to the questions set out in the Notice of Inquiry about the reasonableness of the city's fee estimate; nor did the appellant respond directly to the representations of the city concerning its fee estimate.

Analysis/Findings

[39] The city indicated in its fee estimate decision that it is charging the appellant a search fee of $4,200.00 based on 140 hours of search time at $30.00 per hour.

[40] The city sought the advice of an individual who is familiar with the type and contents of the requested records and also based its decision on a representative sample of the records.

[41] The city's prepared a representative sample of records based on a four month period. This took the city 8.5 hours which at $30.00 per hour would be $255.00. For a seven year period, this would equal 178.5 hours, which at $30.00 per hour would equal $5,355.00. The city only charged the appellant in its fee estimate 140 hours for a total of $4,200.00.

[42] Based on the wording of the appellant's request and the city's detailed explanation of its fee estimate, I find that the city's fee of 140 hours to cover its search time is in accordance with section 45(1)(a) of the *Act*. Accordingly, I am upholding the city's search fee of $4,200. I will now determine whether all or part of this fee should be waived.

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[2] The city states that the time and cost for step 1 has not been included in the 170 hours as it is a one-time cost as the query is reusable.

C. Should the search fee be waived?

[43] Section 45(4) of the *Act* requires an institution to waive fees, in whole or in part, in certain circumstances. This section states in part:

> 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,
>
> (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

[44] Section 8 of Regulation 823 sets out additional matters for a head to consider in deciding whether to waive a fee.

> 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.

[45] 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].

[46] 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, and PO-1953-F].

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

Part 1: basis for fee waiver

Section 45(4)(b): financial hardship

[48] The city states that while the appellant notes in his fee waiver request that he is on a pension, he does not offer any other evidence of financial hardship. In order to establish financial hardship, the city submits that the appellant should have provided details on actual income, expenses, assets or liabilities. The appellant did not provide any of these details to the city. The city also states that based on the limited information provided by the appellant regarding his financial circumstances, it is not satisfied that the payment of the estimated fee would cause the appellant financial hardship within the meaning of section 45(4)(b).

[49] The appellant did not provide representations on whether payment of the fee will cause him financial hardship in response to the Notice of Inquiry.

[50] 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.[3] As the appellant did not provide this evidence, there is no evidentiary basis for granting him a fee waiver on the basis of financial hardship.

Section 45(4)(c): public health or safety

[51] The following factors may be relevant in determining whether dissemination of a record will benefit public health or safety under section 45(4)(c):

- whether the subject matter of the record is a matter of public rather than private interest
- whether the subject matter of the record relates directly to a public health or safety issue
- whether the dissemination of the record would yield a public benefit by
    - (a) disclosing a public health or safety concern, or
    - (b) contributing meaningfully to the development of understanding of an important public health or safety issue

[3] Orders M-914, P-591, P-700, P-1142, P-1365 and P-1393.

- the probability that the requester will disseminate the contents of the record

[Orders P-2, P-474, PO-1953-F, PO-1962]

[52] The focus of section 45(4)(c) is "public health or safety". It is not sufficient that there be only a "public interest" in the records or that the public has a "right to know". There must be some connection between the public interest and a public health and safety issue [Orders MO-1336, MO-2071, PO-2592 and PO-2726].

[53] The city agrees that there is public interest around the issues of both pedestrian and cyclist safety. However, the city disagrees with the appellant's assertion in his fee waiver request that sidewalk cycling incidents "are under reported and undisclosed'. The city states that it has by-laws that restrict cycling on city sidewalks, the *Highway Traffic Act* (*HTA*) also considers a bicycle a vehicle" and the penalties for careless driving apply to both cyclists and drivers.

[54] The city also refers to the review[4] being conducted by the Office of the Chief Coroner into pedestrian deaths to identify common factors that have played a role in pedestrian deaths and where appropriate, make recommendations to prevent similar deaths in the future. The city states that its Medical Officer of Health has been asked to provide comments and recommendations to the review panel.

[55] In addition, the city refers to the Toronto Police Services' "STEP UP and Be Safe" Pedestrian Campaign. It states that pedestrian safety continues to be identified as a Toronto Police Service priority, with an increased focus on reducing injury and death to pedestrians through awareness, education and enforcement.[5]

[56] The city also refers to its Public Works and Infrastructure Committee's referral of a report entitled, *Harmonization and Enforcement of Sidewalk Cycling By-Laws in the City of Toronto* to the General Manager, Transportation Services, with the request that he meet with the appropriate Toronto Police Service staff to develop a strategy for effective enforcement of the sidewalk cycling by-law. The General Manager was to report back to the Public Works and Infrastructure Committee by the June 2012 meeting on the recommended enforcement strategy and the status of the harmonized set fines for the sidewalk cycling by-law.

[57] The city states that its General Manager, Transportation Services was further directed to create a database that allows the public to report and describe pedestrian and cycling conflicts and map conflict spots to be hosted on a city web site and publicized in order to encourage reporting. Additionally, the city refers to a motion that

[4] http://news.ontario.ca/mcscs/en/2011/11/pedestrian-death-review-announcement.html
[5] The city states that in 2011, 6,468 tickets were issued to motorists and cyclists for hazardous offences that affected pedestrians (http://torontopolice.on.ca/d41/20111104-d41_community_bulletin.pdf).

was put forth by City Council requesting the Toronto Police Service enhance its enforcement of the current by-laws regarding illegal cycling on sidewalks.[6]

[58] The city states:

> With respect to the probability that the requester will disseminate the contents of the records, the appellant has stated that he will "post bills in each riding particularly around the councilors' offices and parking lots". This does not address specifically what the requester intends to do with the nearly 2000 of pages of (largely redacted) responsive records. The appellant has been advised on more than one occasion that EMS does not keep statistics on sidewalk cycling incidents. The work to be undertaken by the City of Toronto, Transportation Services Division with respect to the new reporting database will result in the creation of useable and accurate statistics about sidewalk cycling incidents.
>
> It is the appellant's position that disclosure of the requested records "will greatly, meaningfully, contribute to the understanding of this important public health and safety issue". It is the City's position that no additional public awareness or benefit will be gained from the disclosure of the requested records, as it is apparent that this issue is already very much at the forefront of the City of Toronto, Toronto Police Services, and other Provincial agencies. These bodies have a number of public awareness and enforcement initiatives underway, along with other studies and reports on this very issue.
>
> The appellant has provided no evidence that there will be any further public health or safety benefit derived from the release of the requested records, most of which would be heavily severed as they contain the personal medical information of individuals.

[59] The appellant provided extensive representations, most of which focused on the inadequate prosecution of illegal sidewalk cyclists by the Toronto police. He states that pedestrians on the sidewalk do not have the protection and benefit of the *HTA* because the *HTA* does not define the "sidewalk" as the "roadway" for the purpose of keeping off the "bicycle-vehicle". Therefore, he submits that police cannot issue fines under the *HTA* to illegal sidewalk cyclists. He also states that pedestrians on the sidewalk are protected ineffectually by largely unenforced city by-laws.

[60] The appellant disputes that there is publicly available information concerning injuries inflicted on sidewalk-pedestrians by "illegal-sidewalk-cycling". He states:

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[6] http://app.torontocaltmmis/viewAgendaltemHistorq.do?item=2012.PW11.1

> The general public knowledge of the by-laws as they are and soon will be overall reduced, generates public cynicism and certainly not, never, the health and safety awareness of the many thousands of serious injuries and the killings, and the pain and suffering and the personal costs, and in health care cost…

[61] The appellant states that the Coroner only captures in his report deaths inflicted by cyclists. The appellant states that the records he is seeking would reveal more information than just pedestrian deaths on sidewalks inflicted by cyclists.

[62] Concerning the proposed database, the appellant points out that the records responsive to his request encompass more information than that in the proposed database which would only list cyclists' injuries from incidents where the police have charged the sidewalk cyclist that had inflicted the pedestrian injuries.

[63] The appellant states that sidewalk cyclists are often ignored by police and pedestrian injuries inflicted by sidewalk cyclists are underreported.

Analysis/Findings

[64] The Notice of Inquiry sent to the parties asked them to explain whether dissemination of the records would benefit public health or safety with reference to:

- whether the subject matter of the record is a matter of public rather than private interest
- whether the subject matter of the record relates directly to a public health or safety issue
- whether the dissemination of the record would yield a public benefit by
  - disclosing a public health or safety concern, or
  - contributing meaningfully to the development of understanding of an important public health or safety issue
- the probability that the requester will disseminate the contents of the record

[65] Based on my review of the request and the parties' representations, and taking into account that the city agrees that there is public interest around the issues of both pedestrian and cyclist safety, I find that the subject matter of the records is a matter of public interest. As well, I find that the subject matter relates directly to a public safety

issue, as there is ample information in the appellant's representations concerning the safety issues surrounding injuries being caused to pedestrians on sidewalks by cyclists.

[66] I agree with the appellant that dissemination of the records would yield a public benefit by disclosing a public safety concern and contributing meaningfully to the development of understanding of an important public health or safety issue. The appellant has provided extensive representations as to the underreporting of cyclists inflicted pedestrian injuries and the lack of specific public information on the issues set out in in the records.

[67] However, I do not have information in the appellant's representations concerning how and in what manner he will disseminate the contents of the records, even though he was specifically asked to provide representations on the probability that he would disseminate the contents of the records. Accordingly, I find that part 1 of the test has not been met and I will uphold the city's decision to not grant a fee waiver. Nevertheless, for the sake of completeness, I will consider part 2 of the test.

Part 2: fair and equitable

[68] 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]

[69] The city submits that that it has worked cooperatively with the appellant and attempted to provide him with as much information as possible about the records, including the volume of records and the different record types and formats that would need to be searched. It states that both EMS staff and the Access & Privacy Officer worked with him to narrow the request, however, the appellant only agreed to remove "hip injuries inflicted on seniors" and to narrow the timeframe of the request from 15 years to 10 years, even though he was advised that only seven years of certain types of records existed. The city states that this did not reduce the search time significantly as the number of records to search is still large.

[70] The city provided the appellant with a representative sample of the records, free of charge. The charges that would have been incurred to locate and sever these records would have been approximately $450.00.

[71] The city states that EMS Professional Standards staff, which would be tasked with locating the responsive records, play a key role in responding to inquiries from police, customers and health care agencies regarding the delivery of ambulance services. Professional Standards liaises with the Ontario Coroner's Office regarding occurrences where an inquest may result following a fatality. As such, the city submits that requiring EMS staff to take time away from their core functions to locate records at no cost, would shift an unreasonable burden of these costs from the appellant to the city, and ultimately to the taxpayers of Toronto.

[72] The appellant did not respond to these representations of the police. Furthermore, despite being asked in the Notice of Inquiry to provide representations as to whether a fee waiver was fair and equitable in the circumstances of this appeal with reference to the factors set out above, he did not do so.

Analysis/Findings

[73] In this appeal, I find that the factors listed above that weigh against a fee waiver prevail. In particular:

- the city provided the appellant with records free of charge;
- the request involves a large number of records;
- the appellant did not advance a compromise solution which would significantly reduce costs; and,
- waiver of the search fee of $4,200.00 would shift an unreasonable burden of the cost from the appellant to the institution.

[74] Accordingly, I find that part 2 of the test has not been met and I find that a fee waiver is not fair and equitable in the circumstances.

ORDER:

1. I find that the city's interim access decision is adequate

2. I uphold the city's fee estimate of $4,200.00 and I do not waive this fee.

Original signed by: August 29, 2012
Diane Smith
Adjudicator