

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-2762

Appeal MA09-51

City of Vaughan

July 10, 2012

**Summary:** The appellant sought access to City of Vaughan expense information. A number of access decisions were made by the City, resulting in two remaining issues to be determined in the appeal: the scope of the appeal, and whether the City is entitled to charge the appellant a \$16.80 photocopying fee. The scope of the appeal is determined to be for certain records from an identified ledger for a two year period. As the City already issued an access decision for a one year portion of that time period, the City is ordered to issue an access decision for the remaining balance of the time period. The City's decision to charge a \$16.80 photocopying fee is upheld.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended (the *Act*), sections 17 and 45(1)(c) and paragraph 6(1) of regulation 823 to the *Act*.

**Orders and Investigation Reports Considered:** MO-1989, MO-2129 and PO-2904.

### NATURE OF THE APPEAL:

[1] The City of Vaughan (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act* or *MFIPPA*) for access to expense information. The wording of the initial request indicated that the requester sought access to:

1. A copy of Detailed Account Summary including details for the various General Ledgers for Account Number 070001 belonging to the Deputy City Manager/Commissioner of Finance, previously known as only Commissioner of Finance, etc. in respect of Operating Expenses for the years 2003, 2004, 2005, 2006, 2007 and 2008. The location of this document can be found in the year end documentation found in the Accounts Payable/Finance Department. \*this statement should also include the remaining budget monies remaining in each of the years.

2. Once you have completed the above, it will indicate whether records are available to conduct the search for a copy of any and all records in respect of Account Number 070001 belonging to the above position in respect of Operating Expenses for the years 2003, 2004, 2005, 2006, 2007 and 2008, more specifically for GL accounts 7110, 7115, and 7699, including Invoices, Receipts with descriptions and back-up supporting documentation, including any reimbursement made (including cheque and cancelled cheque) together with back-up.

[2] It would appear that an email exchange then took place between the requester and the City with respect to the request, culminating in the City issuing its initial access decision dated January 16, 2009. This was the first of seven access decisions made in relation to this request.

[3] The requester (now the appellant) did not receive the City's first access decision before filing her appeal. Accordingly, it was initially processed as a deemed refusal appeal under section 22(4) of the *Act*, although it was immediately placed on an administrative hold. However, even though the appeal was placed on hold by this office, the City and the appellant continued to exchange communications regarding the request.

[4] The City's initial access decision advised the appellant that it had located records that it viewed as responsive to part one of the request, and was granting access to them in their entirety. With respect to part two of the request the initial access decision provided that:

Pursuant to your email [specified date and time], the City of Vaughan will not proceed with item 2 of your of your original request dated December 18, 2008. The exception to this, again in accordance with your instructions, is account 070001.7110, the ledgers for which have been provided for the years 2006, 2007 and 2008. The detailed account summaries requested as item 1 of your original access request have also been provided. ... The cost to provide you with these documents is \$24.50. ...

Item B of the aforementioned email requests that copies of records relating to 070001.7110, including receipts, evidence of reimbursements, etc. be included as well. The cost to provide you with records related to ledger 070001.7110 for the years 2006, 2007 and 2008 is \$266.40. ...

[5] The requester then advised the City that, in her view, the records it identified as being responsive to the first part of the request were not the records that she sought. She indicated that she sought a specific record. The City then issued a second access decision dated March 2, 2009 granting partial access to the requested record. The City relied on sections 10(1) (third party information), 11(a), (c) and (d) (economic interests) and 14(1) (invasion of privacy) of the *Act* to deny access to the portion it withheld. The fee for access to the record was \$33.40. The appellant paid the fee and received the severed version of the record.

[6] Further communications then took place between the City and the appellant. This resulted in the City issuing a third access decision dated March 10, 2009. The access decision advised the appellant that the City had identified additional responsive records and granted access to them, in full. The City waived the fees for access to these records.

[7] The administrative hold on the file was removed by this office and the appeal proceeded to the mediation stage of the appeals process. During mediation, the appellant explained that her appeal was based on the following grounds:

- the records she received in response to the first part of her request were formatted by the type of expenditure rather than in the year-by-year format that she requested. She also clarified that she is not appealing the City's decision to deny access to the portions of the records, such as account numbers, where access was denied in accordance the *Act*.
- her dissatisfaction with the fee estimate to process the second part of her request. She clarified that she is not requesting a fee waiver under the *Act*, rather that she had already paid for the information that the City provided in an incorrect format and should not be charged again.

[8] As a result of ongoing mediation discussions, the City agreed to review the file and issued a fourth access decision dated October 28, 2010. The access decision provided that:

In accordance with the mediation process [the City] has agreed to provide a fee estimate for the following information:

- Receipts, cheque requisitions and requests for reimbursement from ledger 070001.7110 from January 1, 2006 to December 31, 2008.

The City estimates that it will cost \$206.40 to locate, prepare and reproduce responsive records. ...

As part of the mediation the City has also agreed to produce annual *Detailed Business Transactions Subtotal Object & Business Unit (VO Seq)* printouts for business unit 070001 for the years 2003, 2004, 2005, 2006, 2007 and 2008. I have decided to waive the \$22.50 search and processing fee but require that you pay \$16.80 for the 84 pages of photocopies.

[Emphasis in original]

[9] Still at mediation, in response to the fourth decision letter and discussions with the mediator, the City then issued its fifth access decision dated December 9, 2010. The access decision set out that:

Based on information provided by [the mediator] a second fee estimate has been prepared with respect to appeal MA09-51. I now understand your request to include the following:

- Receipts, cheque requisitions and requests for reimbursement from ledger 070001.7110 from January 1, 2007 to December 31, 2008

I understand that your request no longer includes receipts, cheque requisitions or requests for reimbursement from ledger 070001.7110 from December 1, 2006 to December 31, 2006.

It is estimated that it will cost \$137.00 to locate, prepare and reproduce records responsive to your request.

[10] The letter also provided that, notwithstanding the appellant's request, the City was not willing to waive the photocopy fees of \$16.80 for the *Detailed Business Transactions Subtotal Object & Business Unit (VO Seq)* printouts.

[11] The appellant subsequently paid the fee for copies of receipts, cheque requisitions and requests for reimbursement from ledger 070001.7110 from January 1, 2007 to December 31, 2008 and received access to the non-withheld portion of those responsive records. Upon her receipt of a copy of those records, the appellant noted that several pages were illegible. She also took issue with the City withholding a portion of the records. In response, the City agreed to undertake a further review of the

records resulting in its issuing a sixth access decision dated March 18, 2011. The City disclosed an additional withheld portion of one record and provided the appellant with more legible copies of certain others.

[12] At the close of mediation the Mediator issued an initial Mediator's Report and then a Revised Mediator's Report, incorporating the comments of the appellant and the City with respect to the initial Mediator's Report. This is discussed in more detail in the section on the scope of the request, below.

[13] While many issues were resolved at mediation the appellant took the position that the City should not have severed the name of an individual from a record, takes issue with the City's characterization of the scope of her request and objects to the photocopying fee of \$16.80 relating to the production of annual *Detailed Business Transactions Subtotal Object & Business Unit (VO Seq)* printouts for business unit 070001 for the years 2003, 2004, 2005, 2006, 2007 and 2008.

[14] Mediation did not resolve the matter and it was moved to the adjudication stage of the appeal process where an adjudicator conducts an inquiry under the *Act*. I commenced the inquiry by sending a Notice of Inquiry setting out the facts and issues in the appeal to the City. The City provided representations in response, which included a seventh access decision dated June 14, 2011. As set out in the seventh access decision, the City decided to disclose the withheld name on page 17A of Document 2M2. As a result, this information and the application of section 14(1) of the *Act* to it are no longer at issue in this appeal.

[15] I then sent a Notice of Inquiry along with the City's representations to the appellant. The appellant provided representations in response. I determined that the appellant's representations raised issues to which the City should be given an opportunity to reply. Accordingly, I sent a letter to the City along with a copy of the appellant's representations seeking representations in reply. The City provided reply representations.

## **ISSUES:**

[16] I have reviewed the contents of this appeal file and I find that only the following issues remain to be determined in this appeal:

- A. What is the scope of this appeal?
- B. Should this office uphold the photocopying fee of \$16.80 relating to the production of annual *Detailed Business Transactions Subtotal Object & Business Unit (VO Seq)* printouts for business unit 070001 for the years 2003, 2004, 2005, 2006, 2007 and 2008?

## **DISCUSSION:**

### **A. What is the Scope of this Appeal?**

[17] Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

- (1) A person seeking access to a record shall,
  - (a) make a request in writing to the institution that the person believes has custody or control of the record;
  - (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; and

. . . . .

- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[18] Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour<sup>1</sup>.

[19] That said, parties may agree to alter the scope of the request and the appeal at the request stage, during mediation or in the course of adjudication.

[20] The Mediator's Report in this matter was sent to both the City and the appellant at the conclusion of mediation. In accordance with this office's practice, the covering letter to the Mediator's Report asked the recipients to review the report and advise the Mediator of any errors or omissions.

[21] After receiving the initial Mediator's Report the appellant provided some comments which were then incorporated into a Revised Mediator's Report. One of the appellant's comments was that:

... [the appellant] states that she never limited her request to ledger 070001.7110. She states her request was for all meal receipts from

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<sup>1</sup> Orders P-134 and P-880.

January 1, 2006 to December 31, 2008. She states that she clearly made her position known to the mediator and the mediator should have outlined her position to the City. She believes that any meals receipts from January 1, 2006 to December 31, 2008 are within the scope of her request regardless of which account the City files the receipts under.

[22] The City commented that it had limited its search for responsive records to ledger 070001.7110. This comment was also incorporated into the revised Mediator's Report.

[23] In the revised Mediator's Report the mediator wrote that:

After receiving the [access decision dated October 28, 2010], in an effort to further reduce the fee, the appellant narrowed her request and removed records for the year 2006.

[24] In its representations, the City states that its access decision dated December 9, 2010 followed certain discussions with the mediator. The City submits that this estimate was based on the City's understanding that the request was revised to be only for the following information:

Receipts, check requisitions and requests for reimbursement from ledger 070001.7110 from January 1, 2007 to December 31, 2008.

[25] For the most part the appellant's representations on the scope of the request recount her concerns about the manner in which the mediation unfolded and how the City conducted itself in the course of mediation. With respect to the scope of the request the appellant relies on portions of an email sent to the mediator as annotated by the appellant. The appellant invited me to review the entire email chain.

[26] The appellant then summarizes the scope of her request as being for:

... all meal invoice records charged the City of Vaughan's Corporate American Express Card that have been assigned to the Commissioner of Finance.

[27] The City's reply representations repeat its earlier submissions.

### ***Analysis and Finding***

[28] I have reviewed the entire file in detail, including the email chain referred to by the appellant and a confidential email dated May 6, 2010 from the appellant's husband to an intake analyst clarifying what was at issue in the appeal. Based on all the evidence before me, I conclude that what is at issue in this appeal is the information

sourced from ledger 070001.7110. I find that the scope of this appeal is limited to information that is sourced from that ledger.

[29] With respect to the time frame for which the information is sought, considering all the circumstances and the fact that the appellant provided her comments about the time frame for which the information is sought shortly after her receipt of the initial Mediator's Report, I find that the time frame of this appeal covers the period from January 1, 2006 to December 31, 2008.

[30] For greater certainty, I find that the scope of the request at issue in this appeal is for:

Receipts, check requisitions and requests for reimbursement from ledger 070001.7110 from January 1, 2006 to December 31, 2008.

[31] As the City already made an access decision with respect to the responsive records for the time period from January 1, 2007 to December 31, 2008, I will order that the City provide the appellant with an access decision for access to the above-referenced information for the period from January 1, 2006 to December 31, 2006.

**B. Should this office uphold the photocopying fee of \$16.80.**

[32] As set out above, the appellant explained during mediation that the records she received in response to the first part of her request were formatted by the type of expenditure rather than in the year-by-year format that she says she requested. In the course of mediation, the City issued its fourth access decision dated October 28, 2010 setting out a fee estimate to provide the requested records in the requested format. The fourth access decision set out that:

As part of mediation the City has also agreed to produce annual Detailed *Business Transactions Subtotal Object Account & Business Unit (VO Seq)* printouts for business unit 070001 for the years 2003, 2004, 2005, 2006, 2007 and 2008. I have decided to waive the \$22.50 search and processing fee but require that you pay \$16.80 to cover the 84 pages of photocopies. The printouts will be mailed to you upon receipt of the photocopy fees.

[33] As set out in the revised Mediator's Report the appellant objected to the City's decision to charge an additional photocopying fee of \$16.80 to reformat the information. The revised Mediator's Report set out that:

She is not requesting a fee waiver. It is her position that she already paid the fee to obtain these records. It is her position that the City initially provided her the records in an incorrect format. She does not believe that



she should have to pay any additional fee to have the records sent to her in the format she requested as she has already made full payment.

Accordingly, she objects to the City's additional fee of \$16.80.

[34] In its representations, the City submits that the appellant was initially granted partial access to records responsive to part 1 of her request in the form of printouts. The City states that the "entries in the printouts from March 2009 are identical to the entries in the printouts produced in October 2010." The City submits that it does not have a duty to provide records in the format of the appellant's choosing. The City submits that as part of the mediation it agreed in its October 28, 2010 access decision to provide the appellant with reformatted printouts. It submits that in light of its waiver of \$30.00 to produce and prepare the reformatted printouts, it would be unreasonable to also waive the photocopying costs of \$16.80.

[35] In her representations, the appellant submits the following;

The fees requested by the City for records were paid for in full. The appellant trusted that the proper format would be provided. Format was requested as follows: Operating Expenses for the years 2003, 2004, 2005, 2006, 2007 and 2008. The appellant did not request Operating Expenses from 2003-2008.

The City made no effort to provide any sample or request clarification if they had an issue with the manner in which the request was written.

For the record, prior to this request, the appellant sent an email to the City on two separate occasions ... to explain the format that should have been provided. As well as communicating this request to them by telephone...

Print-outs in yearly format were provided on various files requesting similar records and prior to this request.

The appellant believes the City is acting inappropriately and is simply attempting to frustrate the appellant.

[Emphasis in original]

[36] The appellant then sets out examples of the City providing information in response to two other requests in a year-by-year format.

[37] The City's reply representations repeat its earlier submissions. The City does not specifically address the appellant's assertion that at an early stage she requested that

the information be provided in a particular format. Nor does it address the appellant's allegation of inappropriate conduct. That said, in its initial and reply submissions the City states that that it does not have a duty to provide records in the format of the appellant's choosing.

### ***Analysis and Finding***

[38] Generally speaking, an institution is not required to create a new record in response to a request under the *Act*.<sup>2</sup> That said, in Order PO-2904, I wrote:

This office has previously stated that government organizations are not obliged to maintain records in such a manner as to accommodate the various ways in which a request for information might be framed [See the postscript to Order M-583]. However, this office has also stated that institutions have an obligation to maintain their electronic records in formats that ensure expeditious access and disclosure in a manner or form that is accessible by all members of the public. In the electronic age, this is essential for an open and transparent government institution. [See Order MO-2199]. Furthermore, in the postscript to Order P-1572, former Assistant Commissioner Mitchinson emphasized that as parts of government become increasingly reliant on electronic databases to deliver their programs, it is critically important that public accessibility considerations be part of the decision-making process on any new systems design.

[39] In Order PO-2904, I referred to the decision of Adjudicator Colin Bhattacharjee in Order MO-2129. In Order MO-2129 Adjudicator Bhattacharjee set out the framework for addressing the obligations of an institution when addressing a request for information that exists in a format different from the format requested by a requester.<sup>3</sup>

[40] This point need not be discussed further because the City did ultimately agree to provide the requested information in the format sought by the appellant. The only issue is the photocopying fee for the reformatted information.

[41] Section 45(1)(c) of the *Act* requires an institution to charge photocopying fees. 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

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<sup>2</sup> See Order MO-1989 upheld in *Toronto Police Services Board v. (Ontario) Information and Privacy Commissioner*, 2009 ONCA 20.

<sup>3</sup> See also the discussion in *Toronto Police Services Board v. (Ontario) Information and Privacy Commissioner*, 2009 ONCA 20.

computer and other costs incurred in locating, retrieving, processing and copying a record.

More specific provisions regarding photocopying fees are found in paragraph 1 of section 6 of Regulation 823 to the *Act*. That paragraph reads:

The following are the fees that shall be charged for the purposes of subsection 45(1) of the *Act* for access to a record:

For photocopies and computer printouts, 20 cents per page.

[42] The appellant does not request a fee waiver under the *Act*. The appellant does not argue that the 84 copies were not made. The photocopying fee arises from the information being provided in the format requested by the appellant. I am not satisfied that the appellant has established sufficient grounds to challenge the photocopying fee. Accordingly, this portion of the appeal is dismissed and I uphold the City's \$16.80 fee for the photocopying cost.

**ORDER:**

1. The City shall provide a decision letter to the appellant regarding access to receipts, check requisitions and requests for reimbursement from ledger 070001.7110 for the period from January 1, 2006 to December 31, 2006, considering the date of this order as the date of the request.
2. I uphold the City's \$16.80 fee for the claimed photocopying cost.

Original signed by: \_\_\_\_\_

Steven Faughnan

Adjudicator

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July 10, 2012