

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-2776

Appeal MA11-560

City of Burlington

August 2, 2012

Summary: The appellant made a request for building permit information. The city issued an interim access and fee estimate decision. This order upholds the city's fee estimate.

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

Orders and Investigation Reports Considered: Order MO-2471.

OVERVIEW:

[1] The City of Burlington (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*) for access to:

Original building permit of a [named unit]; all building permits at a [named address].

[2] The city issued an interim decision to the requester with a fee estimate of \$1,519.00. The city also provided its preliminary decision on access stating that the mandatory personal privacy exemption in section 14(1) of the *Act* would most likely apply to some of the records. The city requested a deposit of \$759.50 pursuant to section 7 of Regulation 823 of the *Act*, prior to further work being undertaken to complete the request.

[3] The city provided a breakdown the fee estimate as follows:

To reproduce 885 letter size pages from microfiche:	\$885.00 (+HST)
To reproduce 70 architectural drawings from microfiche:	\$490.00 (+HST)
Photocopies of paper files 120 @ \$0.20 per page:	\$24.00
1 hour of search time @ \$7.50 per 15 minutes:	\$30.00
3 hours of preparation time @ \$7.50 per 15 minutes:	<u>\$90.00</u>
Total estimated fee, excluding HST, where applicable:	\$1519.00

[4] The requester (now the appellant) appealed the city's interim access and fee estimate decision.

[5] During mediation, the city explained that its in-house equipment used for reproducing data recorded on microfiche was outdated and did not produce legible copies for the large number of records requested. As a result, the city stated that it would have to contract this work out to a third party, resulting in the costs outlined above.

[6] No issues were resolved at mediation and the appeal was transferred to the inquiry stage where an adjudicator conducts an inquiry. I sent a Notice of Inquiry, setting out the facts and issues in this appeal, to the city seeking its representations. I received representations from the city, which were sent to the appellant, along with a Notice of Inquiry. The appellant did not provide representations.

[7] In this order, I uphold the city's fee estimate.

DISCUSSION:

Should the fee estimate be upheld?

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

[9] 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].

[10] 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].

[11] 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].

[12] 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].

[13] 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.

[14] 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.

[15] More specific provisions regarding fees are found in sections 6, 6.1, 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.

6.1 The following are the fees that shall be charged for the purposes of subsection 45(1) of the Act for access to personal information about the individual making the request for access:

1. For photocopies and computer printouts, 20 cents per page.
2. For records provided on CD-ROMs, \$10 for each CD-ROM.
3. 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.
4. 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.

[16] The city submits that the fees are based on similar requests received for records from its Planning and Building Department. The city's Freedom of Information Coordinator (FOIC) consulted with staff from that department who process the majority of these types of transactions and received an estimate of the costs involved in providing access to the requested information.

[17] The city also states that the appellant has been given ample information and opportunity to narrow the request and avoid a substantial proportion of the fees. The city states that the \$885.00 and \$490.00 charges in the estimate will be invoiced to the city as a direct result of the access request. The city submits that:

Pursuant to section 6.6 of Regulation 823 the invoiced costs can be charged and the city sees no reason why it should bear those costs, in particular where alternatives exist and have been presented.

[18] The appellant did not provide representations in response.

[19] After a review of the city's representations and the decision letter, I decided to seek further representations from the city concerning the details of its fee estimate. As stated above in its decision letter, the city provided a breakdown of the fee estimate as follows:

To reproduce 885 letter size pages from microfiche:	\$885.00 (+HST)
To reproduce 70 architectural drawings from microfiche:	\$490.00 (+HST)
Photocopies of paper files 120 @ \$0.20 per page:	\$24.00
1 hour of search time @ \$7.50 per 15 minutes:	\$30.00
3 hours of preparation time @ \$7.50 per 15 minutes:	<u>\$90.00</u>
Total estimated fee, excluding HST, where applicable:	\$1519.00

[20] The city provided supplementary representations. These supplementary representations were provided to the appellant. The appellant did not provide representations in response.

[21] The city states in its supplementary representations that the records are kept and maintained as:

1. Letter size pages (\$885.00) – older 'permit files', primarily – are kept on microfiche.
2. Architectural drawings (\$490.00) are kept in large paper rolls at our off-site storage facility and area also scanned and stored on City of Burlington Image Site software.

3. Some newer paper permit files (\$24.00) are on site and kept in various offices and cabinets in the Planning and Building department

[22] The city states that the actions necessary to locate the records and the estimated amount of time involved in each action is:

1. Letter size pages (\$885.00) – 15 minutes was spent on searching for microfiche films.
2. Architectural drawings (\$490.00) – 15 minutes was spent by staff to conduct a search of the Image Site database where scanned architectural drawings are stored.
3. Some newer paper files (\$24.00) - 30 minutes were spent by staff to search on site file holdings for current permit files and coordinate with various staff to verify if they had files in their offices and that all the responsive records were located

[23] The city states that the actions necessary to prepare the records and the estimated amount of time involved in each action is:

1. The permit files referenced in line 1 and 3 (\$885.00 and \$24.00) may contain the personal information of the applicant and need to be reviewed to ensure that it is not released. The total number of pages is 1005. At 2 minutes a page to sever that would be 33.5 hours. However, not all pages will require severing. A sample of permit files revealed that approximately 10% of the pages in a typical permit file have potential to contain personal information that would require severing. Since this is the case the amount of pages requiring severing is assumed to be 10% of the total number of pages. Using this as a guide, a significantly reduced estimate was calculated as follows:

1005 pages x 10% = 105 pages
105 x 2 minutes per page = 210 minutes
210 minutes / 60 = 3.35 hours. Finally, the estimate was further reduced in favour of the requester to 3 hours, or \$90.00.

2. Records in paper format will have to be copied. At \$0.20 per page for 120 pages that is \$24.00.

[24] The city states that the cost incurred to reproduce the records from microfiche is:

1. To produce the 885 pages from microfiche the city will deliver the microfiche to a third party that has the capacity to reproduce large volumes of records from that format. It is charged \$1.00 per page. The city is able to produce smaller volumes of microfiche records, and has done so in other requests for this requester. In this case the volume of records to be printed will cause significant quality issues with the machine the city has that can read and print from microfiche. Even with smaller requests the printer has overheated and shut down as well as produced multiple pages that are totally black rather than the image on the microfiche. Subsequently, all large jobs of this nature have been outsourced to improve print quality, save staff time and for the convenience of the requester.

[25] The city states that it is unable to produce the architectural drawings from microfiche using its printer because it cannot print on the appropriate size of paper. To produce the 70 architectural drawings from microfiche the city will deliver the microfiche to a third party that has the capacity to reproduce large volumes of records in the oversize formats required. The city is charged \$7.00 per drawing which forms the basis of that portion of the fee estimate. The city further states that:

The work will be done by a third party that will invoice the city as is common practice when processing requests of this nature. This is due to limits on available staff time, the quality of the outputs and the ability of the city's equipment to produce architectural drawing size print outs...

The work described throughout these and earlier representations are not a part of the ordinary course of business at the city and would most definitely not be undertaken in the absence of the access request.

Analysis/Findings

[26] In the Notice of Inquiry, the city was asked if it based its fee on the actual work done to respond to the request, if not, the city was asked if 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?
- base its decision on a representative sample of the records? If so, how was the sample determined, and what records were identified?

[27] From its representations, it is apparent that the city did base its fee estimate on the actual work done to respond to the request, except for the reproduction of the records from microfiche, which will be done by a third party.

[28] The city based its fee estimate for the reproduction of records from microfiche on the advice of an individual who is familiar with the type and contents of these types of records. In particular, the city responded to the Notice of Inquiry by stating that staff from the Planning and Building Department provided an estimate of the costs, and that this information was used to provide the bulk of the estimate (\$885.00 and \$490.00). Concerning these two costs, the city states that the \$885.00 and the \$490.00 charges in the estimate will be invoiced to it as a direct result of the access request.

[29] The Notice of Inquiry asked the city whether it had received an invoice for costs, including computer costs, for locating, retrieving, processing and copying the records. If so, the city was asked to provide a copy. The city did not provide a copy of the invoices for \$885.00 and \$490.00; however, it did provide details of the work that is to be done to reproduce 885 letter size pages and 70 architectural drawings from microfiche.

[30] Section 45(1)(e) allows an institution to recover costs incurred in responding to a request for access to a record. Section 6.6 of Regulation 823 allows fees to be charged under section 45(1) of the *Act* for the costs an institution incurs in locating, retrieving, processing and copying the record if those costs are specified in an invoice that the institution has received. In Order MO-2471, it was determined that invoiced costs must describe in detail the work that was done before it can be recovered from a requester under the *Act*. In this appeal, the city has provided a detailed description of the work that is required to be done which may be reflected in an invoice.

[31] Section 45(1)(e) does not allow an institution to recover costs, even if invoiced, that would not have been incurred had the request been processed by the institution's staff.¹ In this appeal, the city has indicated in its representations that the fees of \$885.00 and \$490.00 are fees that would have been incurred had the city's staff reproduced the records themselves from microfiche.

[32] As the city has provided details about the work required to reproduce the records from microfiche and has indicated that these costs would have been incurred by its own staff, I am allowing the fee estimate fees of \$885.00 and \$490.00.

[33] The city has also charged the appellant one hour of search time. Section 45(1)(a) allows the city to charge a fee for the costs of every hour of manual search required to locate a record. The city was asked to explain how the records are kept and maintained and what actions are necessary to locate them. The city stated that 60 minutes were spent by staff to search various holdings and that all the responsive records were located. I am satisfied that the city provided the requested details in its representations as to how the search time charge was arrived at.

¹ Order P-1536.

[34] By providing details in its representations concerning how the records are kept and maintained and what actions are necessary to locate them, I find that the city's search fee of \$30.00 is reasonable. Accordingly, I am allowing the search time in its entirety.

[35] The city has charged the appellant three hours of preparation time. Section 45(1)(b) allows the city to charge a fee for the costs of preparing the record for disclosure. Section 45(1)(b) includes time for severing a record² and for a person running reports from a computer system.³

[36] The city was asked in the Notice of Inquiry to provide details as to what actions were required to prepare the records for disclosure and the amount of time involved in each action. The city provided these requested details in its representations, therefore, I find that the city is properly charging the appellant for allowable fees for preparation time under section 45(1)(b). Therefore, I am allowing the city's fee estimate of \$90.00 for three hours of preparation time.

[37] Sections 6(1) and 6.1(1) of Regulation 823 allow a fee of \$0.20 per photocopy to be charged, therefore, I will allow the city to charge the appellant \$0.20 per photocopy for each page of the records that it provides to the appellant.

Conclusion

[38] Based on my review of the city's representations, I find that the city's fee estimate is reasonable and is in accordance with the fee provisions set out in the *Act* and Regulation 823. Accordingly, I am upholding the city's fee estimate.

ORDER:

I uphold the city's fee estimate and dismiss the appeal.

Original Signed by: _____
Diane Smith
Adjudicator

_____ August 2, 2012

² Order P-4.

³ Order M-1083.