

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-2782

Appeal MA11-446

Toronto Police Services Board

August 22, 2012

Summary: The appellant sought access to records relating to use-of-force equipment stolen, lost or missing from the police. The police issued an interim decision containing a fee estimate of \$1,680 based on 28 hours of search time. The appellant appealed the decision to this office. During mediation, the appellant advised that he submitted a fee waiver request and that it was subsequently denied. The police issued a revised fee estimate of \$840 based on 14 hours of search time. This order does not uphold the fee estimate.

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

OVERVIEW:

[1] The Toronto Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

... reports that show the number and specific types of use-of-force equipment stolen, lost or missing from the Toronto Police Services from Jan . 1, 1985 to Jan. 1, 2011. I ask that this report include a breakdown of the total number of each type of equipment lost or stolen (for example: pepper spray, asp, baton, etc.).

I further request a copy of the occurrence details for each incident of lost or stolen use-of-force equipment from the time period of Jan. 1, 2005 to Jan. 1, 2011.

It is my contention that the information being requested is of great public interest.

[2] The police issued an interim decision containing a fee estimate of \$1,680.00 based on 28 hours of search time. The requester, now the appellant, appealed the decision to this office.

[3] During mediation, the appellant advised that he was appealing the amount of the fee estimate. The appellant also advised that he submitted a fee waiver request under sections 45(4)(b) and (c) of the *Act* to the police, which was denied.

[4] Following discussions between the police and the appellant, the police issued a revised fee estimate of \$840.00, based on 14 hours of search time. The appellant advised that he is appealing the revised fee estimate of \$840.00 and the denial of the fee waiver.

[5] As further mediation was not possible, the matter was transferred to the adjudication stage of the process, where an adjudicator conducts an inquiry under the *Act*. I sent a Notice of Inquiry to the police setting out the facts and issues in the appeal, inviting them to make written representations.

[6] After several extensions and reminders, the police did not submit representations in response to the Notice of Inquiry. As there is no evidence before me to justify the quantum of the fee estimate, I do not uphold it. In addition, I order the police to complete their search in response to the appellant's request and to issue a decision letter respecting access to the records to the appellant.

ISSUES:

- A. Should the fee estimate be upheld?
- B. Should the fee be waived?

DISCUSSION:

A. Should the fee estimate be upheld?

[7] 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.¹ The

¹ Orders P-81, MO-1367, MO-1479, MO-1614 and MO-1699

fee estimate also assists requesters in deciding whether to narrow the scope of a request in order to reduce the fees.² In all cases, the institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated.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.⁴

[9] At the beginning of the inquiry, I issued a Notice of Inquiry to the police, inviting them to make representations in relation to the issues in this appeal. The police requested a one-week extension to submit representations, and the request was granted. When representations were not received, this office contacted the police numerous times to determine whether and when representations would be submitted. The police then advised that they would submit representations within a week. When the representations were still not received, this office contacted the police again to determine whether representations would be forthcoming. Once again, the police advised that they would submit their representations within a week. The police still have yet to submit representations to this office.

[10] In order to resolve this appeal and to avoid further delay to the appellant, I will decide whether the fee estimate provided by the police is reasonable or not, based on the evidence provided to this office prior to the adjudication stage.

[11] In response to the appellant's initial access request, the police issued an interim fee decision. The police advised:

... based on consultations with the Toronto Police Service, Business Intelligence Unit (BIU), the estimated search time for a dedicated Analyst to retrieve the specific requested data would be four working days (7 hour working day). Based upon a preliminary review, the fee estimate has been calculated at \$1680.00 for preparing the record for disclosure by an Analyst of the BIU.

[12] During mediation, the police issued a revised fee estimate to the appellant, advising that:

Upon further consultations with the Toronto Police Service, Business Intelligence Unit (BIU), the estimated search time for a dedicated Analyst

² Order MO-1520-I

³ Orders P-81 and MO-1614

⁴ Order MO-1699

to retrieve the specified data has been amended to two (2) business days to complete (7 hour day). Pursuant to this update, the fee estimate has been re-calculated at \$840.00 for the preparation of the record for disclosure.

[13] The police enclosed a revised fee estimate invoice in which they charged the appellant \$840.00 for 14 hours of "search time to locate and assemble document" and "reproduction" of the record requested.

[14] This office may review an institution's fee estimate and determine whether it complies with the fee provisions in section 45(1) of the *Act* and Regulation 823.

[15] Section 45(1) states:

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.

[16] More specific provisions regarding fees are found in sections 6, 6.1 and 7 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.

[17] In reviewing the police's fee estimate, I must consider whether the charges by the police are reasonable, giving consideration to the content of the appellant's request, the circumstances of the appeal and the provisions of section 45(1) of the *Act* and Regulation 823. The burden of establishing the reasonableness of the fee estimate rests with the police. To discharge this burden, the police must provide me with detailed information as to whether the fee estimate was calculated in accordance with the provisions of the *Act*, and produce sufficient evidence to support its claim.

[18] As previously mentioned, the police failed to provide me with representations describing how the fee estimate was calculated, despite repeated attempts by this office to solicit their position. Given that I will not be upholding the fee estimate, I believe it is instructive to enumerate these efforts:

June 12, 2012 – I wrote to the police providing them with a Notice of Inquiry setting out the facts and issues in the appeal and providing them until July 4th to provide me with their representations;

June 18, 2012 – I provided the police with a one week extension to provide representations;

July 17, 2012 – A staff member from this office contacted the police regarding their overdue representations;

July 20, 2012 – The police indicated by email that the representations would be submitted by July 27th;

July 31, 2012 – A staff member with this office again contacted the police by email indicating that the representations remain overdue and that the inquiry will continue should they not be received;

July 31, 2012 – the police responded to say that the representations would be submitted by August 3rd.

[19] As this chronology indicates, the police were provided with ample opportunity to submit representations to justify their fee estimate. Despite repeated assurances that this would be done, I have yet to receive any representations. The police also failed to provide the appellant with a detailed breakdown of the work required to retrieve the information and the amount of time needed for each activity performed. In this regard, the decision letters issued to the appellant did not include such a detailed breakdown of the fee or a detailed statement of how the fee was calculated, as required by this office.⁵

[20] Therefore, I have no basis to assess the reasonableness of the fee estimate. As a result, I find that the police have failed to discharge the burden of establishing that the fee estimate of \$840.00 for 14 hours of search time is reasonable. Accordingly, I conclude that because the fee estimate is not reasonable, the police are not entitled to charge a fee for the records.

B. Should the fee be waived?

[21] As I have determined that the fee estimate is not reasonable, I do not need to consider whether the fee should be waived.

ORDER:

1. I do not uphold the police's fee estimate of \$840.00.
2. I order the police to perform the search for the requested records and issue a decision letter to the appellant, treating the date of this order as the date of the request.
3. I do not allow the police to charge any search fees in relation to Order Provision 2.

Original signed by: _____
Brian Beamish
Assistant Commissioner

August 22, 2012

⁵ Orders P-81 and MO-1614