

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-2874

Appeal MA12-247

Halton Region Conservation Authority

April 25, 2013

Summary: The appellant made a request for access to certain information relating to job postings with the Halton Region Conservation Authority (the HRCA). In response, the HRCA provided the appellant with a fee estimate, which was appealed. During mediation, the fee was substantially reduced, as was the scope of the request. In this decision, the fee estimate is upheld and the appeal is dismissed.

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

OVERVIEW:

[1] The Halton Region Conservation Authority (the HRCA) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to a specified job competition. The request specifically sought:

All policies, including draft copies, surrounding the advertisement of job postings. Plus, any social media guidelines or strategies including draft copies, specifically how they do or could relate to hiring.

The RFP (including the name of the successful bidding Company (not personal information) for freelance work as well as documents explaining

the method used to commission the services of a graphic designer during the time in which there had not been a graphic designer in-house. This might include emails, faxes, memos, texts, or referrals.

- Identification of the position responsible for CH's Twitter Account
- Evidence that the address: [named email address] does exist
- All documents including, but not limited to, emails, letters, reports, faxes, memos, texts, pings and any other correspondence that mentions my name, [name of the requester]. This includes exchange between staff.

[2] The HRCA located responsive records and issued an interim decision to the requester, including a fee estimate of \$450.00. The HRCA also provided its preliminary decision on access stating that the mandatory personal privacy exemption in section 14(1) of the *Act* may apply to some of the information in the records. The HRCA requested a deposit of \$225.00 pursuant to section 7 of Regulation 823 of the *Act*, prior to further work being undertaken to complete the request.

[3] In response to the interim decision, the requester narrowed his request to include only:

- 1) RFP results of freelance contracts for graphic artist or designer during a period in which there was not in-house designer (generally public information);
- 2) Direct tweets to individuals to apply for the position of graphic designer from the Conservation Halton twitter account; and
- 3) Any document(s) (emails, memos) that mentions my name, [name of the requester].

[4] As a result of the narrowed request, the HRCA issued a subsequent interim decision to the requester with a reduced fee estimate of \$302.40. The HRCA also reiterated its preliminary decision on access stating that section 14(1) of the *Act* may apply to some of the information in the records. The HRCA requested a deposit of \$151.20 prior to further work being undertaken to complete the request.

[5] The requester (now appellant) appealed the HRCA's fee estimate decision.

[6] During mediation, the HRCA advised the mediator that it was no longer relying on section 14(1) of the *Act* to deny access to the records. The HRCA indicated that upon payment of the fee, it expected to grant full access to the responsive records. The appellant explained to the mediator that he believes the estimated fee for the records is excessive. He also sought and then withdrew a request for a fee waiver, after the HRCA denied it.

[7] Finally, the HRCA agreed to further reduce the fee estimate to \$225.00, plus photocopying charges of approximately \$1.40 and provided the appellant with a revised fee estimate. As further mediation was not possible, the appeal was moved to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry under the *Act*. I sought and received the representations of the HRCA and the appellant, complete copies of which were shared between the parties in accordance with *Practice Direction 7* and section 7 of the *IPC Code of Procedure*. In addition, reply representations from the HRCA were also sought and received.

[8] In this decision, I uphold the fee estimate provided to the appellant by the HRCA.

DISCUSSION:

[9] The sole issue for determination in this appeal is whether the fee estimate of \$225 was calculated in accordance with the requirements of the *Act* and should, therefore, be upheld.

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

[11] 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].

[12] 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

[13] 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].

[14] 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].

[15] 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.

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

[16] 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.

[17] 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.

Calculation of fee

[18] In its representations, the HRCA sets out in detail the calculations used to arrive at its fee estimates, both the preliminary fee and that made in response to the appellant's revised request. In both cases, the HRCA describes the time required for each individual who conducted the required searches and notes that the fees for search time were based on the actual time required to perform the search. The HRCA notes that the search time indicated in the fees quoted did not include time spent searching for records containing the appellant's personal information, though photocopy charges

for both types of information were included, as is mandated by the fee provisions in section 45(1).

[19] The appellant appears to take issue with the fact that the fees were reduced as a result of mediation. He notes that the time required to locate records that are responsive to the request was less with each successive decision issued by the HRCA. I note that the scope of the appellant's request was less broad after the mediation process was completed, thereby reducing the fees that the HRCA could charge.

[20] The appellant also refers to a second request for the information which he removed from the scope of this appeal. In its decision with respect to that request, the HRCA charged a fee which was less than the difference between the fee in its preliminary, pre-narrowing decision and the fee in its post-mediation decision. The appellant questions how this is possible. I am unable to determine how this question is relevant to my determination of the appropriateness of the fee being charged in the appeal before me and I decline to comment further on these submissions.

[21] The HRCA provided me with an explanation as to how each of the fee estimate provided to the appellant were calculated, including a description of the searches and their results.

[22] In my view, the HRCA has met its onus of proof with respect to the fee estimate it has provided to the appellant. The fee calculated is based on the actual work performed to locate the requested information and has not been refuted by the arguments raised by the appellant. I find that the search fee quoted is reasonable and does not include a charge for the search time which it may have required to locate the appellant's own personal information. In addition, I find that the photocopying charges conform with the provisions of section 45(1).

[23] In conclusion, I find that the fee estimate was properly calculated and is in compliance with the requirements of section 45(1).

ORDER:

I uphold the fee estimate and dismiss the appeal.

Original signed by: _____
Donald Hale
Adjudicator

_____ April 25, 2013