

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-2944

Appeal MA11-233

City of Stratford

September 11, 2013

Summary: The City of Stratford (the city) received a request for access to the questionnaire submitted by the city to the Intelligent Community Awards Program. The city denied access to the record claiming the mandatory third party information exemption in section 10(1). This order does not uphold the city's decision under section 10(1) and orders disclosure of the record, except for the personal information contained therein. This order also reduces the fee charged for access to the record.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1)(e) (definition of personal information), 10(1), 45(1).

Orders and Investigation Reports Considered: Order MO-2935.

OVERVIEW:

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

...

The locations of all equipment owned or controlled, directly or indirectly by the City of Stratford, including equipment owned or

operated by City owned Festival Hydro and City owned Rhizome Networks that transmits radio frequencies or micro-wave radiation.

In particular I request the locations or proposed locations of all Wi Fi transmitters on City Streets and within municipal buildings, the type of equipment, the frequencies that are transmitted from that equipment and the power strength that is emitted by that equipment.

For smart meter transmitters, there is no need to identify the location of each smart meter, but I request the number of residential smart meters and the number of smart meters on commercial buildings in the City of Stratford.

There are two Wi Fi transmitters close to my home at [named streets] (in direct line of sight) and nearby at [named streets], which are adversely affecting my health. They are emitting strong radiation twenty four hours a day. As of this date, I request to know how many citizens in the [named subdivision] or nearby housing, have paid to use this Wi Fi service and could these two devices be removed without causing extreme hardship to the neighbourhood?

Last summer I provided each Stratford City Councilor with a compact disc with several scientific documents that illustrated the adverse health effects of electromagnetic radiation. I also attended a City Council meeting and made a presentation on the subject. I request to know whether the Councilors and [named Mayor] studied that information, and whether they understand the dangers caused by exposure to electromagnetic radiation? Please provide a copy of the original CD that I sent you to each of the recently elected Councilors, so that they are fully aware of the information and the danger faced by Stratford citizens.

I request an electronic copy of the application [the questionnaire] that the City of Stratford submitted to the Intelligent Community Forum [(ICF)] in its attempt to be named one of the Top 7 Intelligent Communities in the world.

...

[2] The city issued a decision in which it advised the appellant that the access request relating to the locations of the equipment used to transmit Wi-Fi had been forwarded to Festival Hydro Inc. (Festival Hydro or FHSI), pursuant to sections 18(2) and (3) of the *Act*. The city stated that Festival Hydro is the institution with "control or custody of the record or a greater interest in a majority of the records requested." The

city stated that Festival Hydro would respond to the requester directly with regard to these records.¹

[3] In response to the remainder of the access request for records in its control or custody, the city responded as follows:

...

The records contain the location of municipal buildings, the type of equipment and manuals/guides from the equipment suppliers. A preliminary review indicates that copies of the responsive records in our control or custody as they relate to municipal buildings may be released to you.

The City confirms that information you supplied last year, that included a compact disc, were provided to members of City Council. The City will review to see if we have extra copies available that can be provided to recently-elected Council members.

With respect to the portion of your request about the information supplied, following receipt of the information, Council directed that the information and additional information supplied by you to be forwarded to the federal Minister of Health and Industry Canada for their review. The City forwarded the information and received responses from the Minister and Industry Canada. Copies of their responses were provided to you.

With respect to obtaining an electronic copy of the application that the City submitted to the ICF, the City contracted the consultant who submitted the application. The nomination form for the Smart 21 designation and the questionnaire for the Top 7 were created on forms provided by ICF and the submissions become property of the ICF. However, work was recently completed to share information from the submissions. This information is available at <http://stratfordsmartcity.ca>

There is information also available from the ICF's website.²

...

¹ See Order MO-2935, concerning the portions of the request not seeking the ICF Questionnaire.

² <http://www.intelligentcommunity.org/>

[4] The city then provided a fee estimate of \$180.20 and asked for payment of 50% before continuing with the access request.

[5] The city also noted that as an alternative to providing copies of the manuals and guides, the majority of these records could be accessed from the suppliers' websites on the internet.

[6] The requester (now the appellant) appealed the city's decision.

[7] During the mediation stage of the appeal process, the appellant advised the mediator that he was not seeking access to the manuals and guides that were found, as described in the city's decision letter. As the manuals and guides were no longer at issue, the fee estimate provided for this information is no longer at issue. During mediation, the appellant confirmed that he is seeking access to the ICF application.

[8] The city conducted a further search, located a responsive record (an electronic copy of the ICF application) and issued a supplementary decision letter. In its decision, the city agreed to provide partial access to the record, subject to notifying several third parties (the affected parties) of its decision to provide access. Access to some of the information at issue was denied, pursuant to sections 10(1) (third party information), 11 (economic and other interests) and 14(1) (personal privacy) of the *Act*.

[9] The city also noted there would be a fee in the amount of \$152.50 for the electronic copy of the ICF application. The city provided a breakdown setting out how it calculated the fee.

[10] None of the third parties who were notified by the city appealed the decision.

[11] The appellant advised the mediator that he is appealing the city's decision regarding both the \$152.50 fee and the exemptions claimed. The appellant confirmed that he was not seeking access to any personal information and, therefore, section 14(1) is no longer at issue in the appeal.

[12] No further mediation was possible and the file was moved to the adjudication stage of the appeal process for an inquiry in which the parties are invited to provide written representations on the issues in dispute.

[13] The adjudicator previously assigned to this appeal commenced the inquiry by issuing a Notice of Inquiry, setting out the facts and issues in this appeal, seeking representations from the city and 26 affected parties. The city was asked to respond to all issues in the Notice of Inquiry. The affected parties were asked to provide representations on the application of section 10(1) to the record. Representations were received from the city and five affected parties. In its representations, the city withdrew its reliance on section 11 for certain information on pages 5, 8 and 16 and advised that

this information could be disclosed to the appellant. Therefore, section 11 is no longer at issue in this appeal.

[14] A Notice of Inquiry was then sent to the appellant seeking his representations and providing him with copies of the severed representations of the city and the complete representations of the five affected parties. Portions of the city's representations were severed due to confidentiality concerns. The appellant did not provide representations in response.

[15] In this decision, I order disclosure of the record, except for the personal information contained therein. I also reduce the fee charged by the city for access to the record.

RECORDS:

[16] There is one record at issue, consisting of a document titled "Questionnaire, Intelligent Community Awards Program, Top Seven Intelligent Communities Phase, 2011."³

ISSUES:

- A. Does the mandatory third party information exemption at section 10(1) apply to the record?
- B. Should the \$152.50 fee be upheld?

DISCUSSION:

A. Does the mandatory third party information exemption at section 10(1) apply to the record?

[17] Section 10(1) states:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

³ The ICF questionnaire.

- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or
- (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

[18] Section 10(1) is designed to protect the confidential “informational assets” of businesses or other organizations that provide information to government institutions.⁴ Although one of the central purposes of the *Act* is to shed light on the operations of government, section 10(1) serves to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace.⁵

[19] For section 10(1) to apply, the institution and/or the third party must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; and
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in paragraph (a), (b), (c) and/or (d) of section 10(1) will occur.

Part 1: type of information

[20] The city states that the record contains trade secrets, scientific information, technical information, commercial information and financial information of third parties. Its submissions can be summarized as follows:

- With respect to trade secret, scientific and technical information, the record contains descriptions of third parties’ systems, research processes, strategies and

⁴ *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.), leave to appeal dismissed, Doc. M32858 (C.A.).

⁵ Orders PO-1805, PO-2018, PO-2184 and MO-1706.

processes that describe their business and how they use their systems in the technology field.

- Parts of the record contain commercial information relating to the buying, selling and exchange of goods and services.
- There is commercial information relating to the purchase of land and to negotiations for goods, services, real estate, services in kind, programs and public-private partnerships that have not yet been consummated.
- There is financial information containing specific data on the use and distribution of money by third parties. Some of the information relate to financial incentives and conditions attached to financial incentives and the consequences of such specific financing.

[21] As stated above, five affected parties provided representations. These parties consisted of:

- a software company;
- a health and safety training company;
- two universities, both of which consented to disclosure of their information in the record; and
- a specific high school that made representations on the section 14(1) personal privacy exemption only.⁶

[22] The software company was the only affected party that provided representations on section 10(1). The software company states that the record contains commercial information. It states that:

[it] sells a software-as-a-service solution for team-based collaboration for an annual subscription price and related services for a fee. [The software company] is pioneering specific techniques and methods for which a patent was filed in Canada and the US in January 2012.

⁶ Section 14(1) is no longer at issue.

Analysis/Findings

[23] The types of information listed in section 10(1), referred to above, have been discussed in prior orders:

Trade secret means information including but not limited to a formula, pattern, compilation, programme, method, technique, or process or information contained or embodied in a product, device or mechanism which

- (i) is, or may be used in a trade or business,
- (ii) is not generally known in that trade or business,
- (iii) has economic value from not being generally known, and
- (iv) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.⁷

Scientific information is information belonging to an organized field of knowledge in the natural, biological or social sciences, or mathematics. In addition, for information to be characterized as scientific, it must relate to the observation and testing of a specific hypothesis or conclusion and be undertaken by an expert in the field.⁸

Technical information is information belonging to an organized field of knowledge that would fall under the general categories of applied sciences or mechanical arts. Examples of these fields include architecture, engineering or electronics. While it is difficult to define technical information in a precise fashion, it will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or thing.⁹

Commercial information is information that relates solely to the buying, selling or exchange of merchandise or services. This term can apply to both profit-making enterprises and non-profit organizations, and has equal application to both large and small enterprises.¹⁰ The fact that a record

⁷ Order PO-2010.

⁸ Order PO-2010.

⁹ Order PO-2010.

¹⁰ Order PO-2010.

might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information.¹¹

Financial information refers to information relating to money and its use or distribution and must contain or refer to specific data. Examples of this type of information include cost accounting methods, pricing practices, profit and loss data, overhead and operating costs.¹²

[24] The record is 33 pages and is entitled, "Questionnaire, Intelligent Community Awards Program, Top Seven Intelligent Communities Phase, 2011, Top Seven Intelligent Communities Phase." This questionnaire was completed by the city and submitted to the ICF.

[25] The ICF website¹³ describes how communities are selected to complete this questionnaire. The website states that any community using technology to improve its economy can participate in its yearlong awards program. This awards program is a 12-month, three-stage, data-driven process.

[26] In the first stage, after review of nominations received from cities and regions worldwide by an international academic team, the ICF announces the Smart 21 Communities of the Year.

[27] During the second stage, these top 21 communities are invited to complete a detailed questionnaire, which is evaluated by an independent research firm. The seven highest-scoring cities or regions are then named as the Top 7 Intelligent Communities of the Year.

[28] During the third stage, ICF co-founders make two-day site visits to each of the Top 7 communities and write reports, which are reviewed by an international jury of thought leaders. Their votes are combined with the analysis of the independent research company to select the Intelligent Community of the Year.

[29] The record at issue is Stratford's questionnaire submitted to the ICF during the second stage of the process in 2010 for consideration for the 2011 ICF award. This questionnaire quotes extensively from Stratford business owners¹⁴ who provided information about their organizations in support of Stratford's application for the award.

[30] Based on my review of the record and the representations of the city and the one affected party (the software company) that provided representations on section 10(1), I find that the record does not contain technical information. I cannot ascertain

¹¹ Order P-1621.

¹² Order PO-2010.

¹³ <http://www.intelligentcommunity.org/>

¹⁴ The affected parties.

from my review of the record any information belonging to an organized field of knowledge that would fall under the general categories of applied sciences or mechanical arts. Nor has the city directed me to any portion of the record that contains such information.

[31] I also find that I do not have sufficient evidence to find that the record contains trade secrets, as I have no representations on whether there is any specific information in the record that:

- is not generally known in an affected parties' trade or business,
- has economic value from not being generally known, and
- is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

[32] I agree with the city and the software company that the record contains commercial information relating to the buying, selling and exchange of goods and services of the affected parties' businesses. As well, as the record contains commercial information belonging to the city concerning the buying and selling of land and other goods and services.

[33] The record also contains financial information relating to pricing practices and costs of some of the affected parties and the city.

[34] As the record contains commercial and financial information, I find that part 1 of the test under section 10(1) has been met.

Part 2: supplied in confidence

Supplied

[35] The requirement that it be shown that the information was "supplied" to the institution reflects the purpose in section 10(1) of protecting the informational assets of third parties.¹⁵

[36] Information may qualify as "supplied" if it was directly supplied to an institution by a third party, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party.¹⁶

[37] The city submits that the consultant who prepared the record contacted entrepreneurs, community leaders, technology firms, and business leaders for

¹⁵ Order MO-1706.

¹⁶ Orders PO-2020, PO-2043.

information to be included in the city's 2011 submission to ICF. The consultant collected information directly from the third parties to include with the city's responses to the specific questions to be addressed in the record. It states that the responses from the third parties demonstrate their unique systems, technology and business strategies that set them apart and how they contribute to the city's strategy of partnering and encouraging technology firms and entrepreneurs in Stratford.

[38] The software company states that normal industry practices for software companies is to rigorously protect their customer and prospective customer lists and to disclose only those with whom approval has been obtained and for strategic or tactical reasons.

Analysis/Findings re supplied

[39] Based on my review of the information at issue in the record, I find that it was directly supplied to an institution by the affected parties. This information was explicitly provided by the affected parties to the city's consultant who prepared the record for inclusion in the record.

[40] I will now consider whether this information was supplied in confidence.

In confidence

[41] In order to satisfy the "in confidence" component of part two, the parties resisting disclosure must establish that the supplier had a reasonable expectation of confidentiality, implicit or explicit, at the time the information was provided. This expectation must have an objective basis.¹⁷

[42] In determining whether an expectation of confidentiality is based on reasonable and objective grounds, it is necessary to consider all the circumstances of the case, including whether the information was:

- communicated to the institution on the basis that it was confidential and that it was to be kept confidential
- treated consistently in a manner that indicates a concern for its protection from disclosure by the affected person prior to being communicated to the government organization
- not otherwise disclosed or available from sources to which the public has access

¹⁷ Order PO-2020.

- prepared for a purpose that would not entail disclosure.¹⁸

[43] Concerning the in confidence component of part 2 of the test under section 10(1), the city provided both confidential and non-confidential representations. In its non-confidential representations, the city states that its consultant, in his discussions with third parties during the preparation of the record, advised the affected parties that:

- the conversation was only in support of the ICF submission, not for the public, and
- the furthest the information would be distributed would be the ICF Committee.

[44] The city states that the consultant even went to the extent of recognizing third parties in the record for supplying their information in confidence. It refers to pages 18 and 21 of the record in particular, which includes the following statements from the consultant:

Our thanks to [the software company] for sharing this information prior to [the] official launch.¹⁹

Again, our thanks to [name of another affected party's representative] for sharing sensitive information²⁰

[45] The city states that it protected the information and did not share it with its employees, nor has it made the record available publicly.

[46] The software company states that:

Normal industry practices for software companies is to rigorously protect their customer and prospective customer lists and to disclose only those with whom approval has been obtained and for strategic or tactical reasons. When [it] provided information in its representation the City of Stratford it did so with an implicit, usual and reasonable expectation of confidentiality

¹⁸ Orders PO-2043, PO-2371, PO-2497.

¹⁹ Page 18 of the record.

²⁰ Page 21 of the record.

Analysis/Findings re in confidence

[47] Based on my review of the information at issue in the record, I find that much of the information at issue was not supplied in confidence as it is:

- general information about an affected party's business. This information is the type of information that could be found on these parties' website, which are listed in the record. I find that this is information that is available from sources to which the public has access; or,
- an affected party's endorsement of Stratford's application for the ICF award. This information is primarily about Stratford and why it should receive the ICF award. I find that this information was prepared for a purpose that would entail disclosure.

[48] Furthermore, the questionnaire states²¹ that:

Ownership of Information

By submitting this information, the above-named community attests and acknowledges that:

...

- All information submitted to the ICF in connection with its international awards program becomes the property of the Intelligent Community Forum and will be used for the purposes of research, analysis and publication in pursuit of its global mission. [Emphasis added].

[49] Most importantly, as the questionnaire that comprises the record states that any of the information submitted to the IFC in the questionnaire may be published, I find that none of the information at issue in the record was supplied with a reasonably held expectation that it would be held in confidence.

[50] In making this finding, I have taken into consideration the specific representations of the city concerning the consultant's comments on pages 18 and 21 of the record.

[51] The information on page 18 of the record refers to the software company whose information is located on pages 17 to 19. There is a notation on the top of page 18 that the information²² is "HIGHLY CONFIDENTIAL."

²¹ At pages 31 and 32 of the record.

²² Except for the last two paragraphs on page 18.

[52] The consultant's comment about sharing information prior to the official launch refers to the information commencing at the bottom of page 17 and is a personal summation of the founder of the software company. This information is this individual's views about the City of Stratford provided by the founder in her personal capacity prior to the software company's official launch. The definition of personal information in section 2(1)(e) of the *Act* provides that personal information of an identifiable individual includes their personal opinions or views except if they relate to another individual.

[53] The personal summation of the founder of the software company commencing at the bottom of page 17 of the record and continuing onto page 18²³ constitutes this individual's personal information, as it is this individual's personal opinions or views on City of Stratford, not pertaining to another individual. As set out above, the appellant advised the mediator that he was not interested in receiving disclosure of the personal information in the record. The city has already identified personal information in the record located at pages 10 and 24 and this information is not at issue in this appeal. I find that the personal information starting at the bottom of page 17 and continuing on to page 18, except for the last two paragraphs of page 18, is also not at issue in this appeal and I will not consider further in this order.

[54] Similarly, the founder of the software company's employment history is found in a sentence at the bottom of page 17 of the record. This information is this individual's personal information, as set out in paragraph (b) of the definition of personal information in section 2(1) of the *Act*. This information, as personal information, is not at issue in this appeal and I will not consider further in this order.

[55] The remaining information at issue pertaining to the software company is found in two paragraphs at the bottom of page 17 and in two paragraphs at the bottom of page 18, one of which paragraphs continues on to the top of page 19 of the record. None of this remaining information at issue contains information about customer and prospective customer lists. Although the software company provided representations on part 2 of the test under section 10(1), its representations only concern disclosure of its customer and prospective customer lists. For the same reasons set out above concerning the other affected parties, I find that the remaining information of the software company found at pages 17 to 19 in the record was not supplied in confidence.²⁴

[56] I have also taken into account the information on page 21 cited by the city. This information refers to an affected party's information on pages 20 to 22 of the record. This affected party did not provide representations in response to the Notice of Inquiry. I find that the comment by the consultant thanking an affected party's representative for sharing sensitive information does not establish that the supplier of the information

²³ Except the last two paragraphs of page 18.

²⁴ See paragraphs 47 to 49 above.

had a reasonable expectation of confidentiality, implicit or explicit, at the time the information was provided.

[57] I find that the in confidence component of part 2 of the test under section 10(1) has not been established for any of the information remaining at issue for which section 10(1) has been claimed by the city. In making this finding, I have taken into account that the consultant may have advised the affected parties that the furthest the information would be distributed would be the ICF Committee. I find that this assurance does not result in a finding that this information would not otherwise be disclosed or available from sources to which the public has access or prepared for a purpose that would not entail disclosure. The ICF website, which the appellant was directed to by the city,²⁵ describes this organization as an organization that issues publications on ICF communities, as follows:²⁶

About Intelligent Community Forum

The Intelligent Community Forum (ICF) studies and promotes the best practices of the world's Intelligent Communities as they adapt to the demands and seize the opportunities presented by information and communications technology (ICT). To help communities build prosperous economies, solve social problems and enrich local cultures, ICF conducts research, hosts events, publishes books and white papers and produces its high-profile international awards program...

[58] I find that the information in the record, which was prepared by the city for submission to the ICF, was not supplied to the city with a reasonable expectation of confidentiality.

[59] Therefore, I find that part 2 of the test has not been met and that section 10(1) does not apply to exempt the information at issue in the record and I will order the record disclosed, other than the personal information at pages 10, 17, 18 and 24.

B. Should the \$152.50 fee be upheld?

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

[61] Where the fee exceeds \$25, an institution must provide the requester with a fee estimate.²⁷

[62] Where the fee is \$100 or more, the fee estimate may be based on either

²⁵ See paragraph 3 above

²⁶ <http://www.intelligentcommunity.org/index.php?src=news&srctype=detail&category=Awards&refno=990>

²⁷ Section 45(3).

- 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.²⁸

[63] 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.²⁹

[64] The fee estimate also assists requesters to decide whether to narrow the scope of a request in order to reduce the fees.³⁰

[65] In all cases, the institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated.³¹

[66] 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.

[67] 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.

²⁸ Order MO-1699.

²⁹ Orders P-81, MO-1367, MO-1479, MO-1614 and MO-1699.

³⁰ Order MO-1520-I.

³¹ Orders P-81 and MO-1614.

[68] More specific provisions regarding fees are found in section 6 of Regulation 823. This section 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:

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.

[69] In its decision letter, the city advised that its \$152.50 fee was broken down as follows:

Search/review time:	0.5 hour (at \$30/hour)	\$ 15.00
Preparation time:	4.0 hours (at \$30/hour)	120.00
Computer time to produce CD:	0.25 hour (at \$30/hour)	7.50
CD cost:		<u>10.00</u>
	Total	<u>\$152.50</u>

[70] The city states that it based its fee on the actual work done to respond to the request, except for the computer time to produce an electronic copy of the record, copy it to a compact disc and the cost of the disc.

[71] The city states that it conducted an initial search of its records to locate an electronic copy of the requested record by having employees check their computer drives. The city was unable to locate the requested record. The city then contacted the

consultant who completed the city's submission to ICF. The consultant was able to obtain an electronic copy of the requested record from the ICF.

[72] The city proposes to make an electronic copy of the redacted record on a compact disc. If the appellant would prefer a paper copy of the redacted record, there would be a charge of 20 cents per page in place of the computer preparation cost of \$7.50 and the disc of \$10.

[73] Concerning the \$15.00 search time under section 45(1)(a), the city states that it did not charge:

- Search time for the consultant to locate an electronic copy of the record; and
- Time for the consultant to contact and arrange for the ICF to provide an electronic copy of the record.

[74] Concerning the \$120.00 preparation time under section 45(1)(b), the city states that it charged more than 2 minutes per page to sever the pages of the record that required severing due to:

- the small font size used in the record,
- the multiple column format of the record, and
- Some information to be redacted is repeated or referenced in other sections of the record and required time to refer to similar sections in the record to ensure consistency in applying exemptions for disclosure or redacting.

[75] Concerning the preparation time, the city states that it did not charge for:

- Identifying and preparing records requiring third party notices;
- Responding to inquiries from third parties with regard to this access request;
- Transporting records to the mailroom or arranging for delivery service;
- Assembling information;
- Photocopying;
- Shipping costs to the requestor; and

- Refilling and restoring records to their original state after they have been reviewed and copied.

[76] The city states that it has not charged fees under section 45(1)(c) for a computer to compile and print information, other than when it has to produce an electronic copy of the record.

[77] Concerning section 45(1)(d), the city states that there may be shipping costs involved in responding to this request.

[78] The city states that there are no other costs charged under section 45(1)(e).

Analysis/Findings

[79] The city has charged a half an hour to search and locate the record under section 45(1)(a). Based on my review of the city's representations, I find that this is a reasonable amount and I will allow it.

[80] The city has charged \$120.00 to prepare the record for disclosure. However, all of the record is to be disclosed except for the pages that have personal information on them, which the appellant is not interested in receiving. The city has identified personal information in the record on pages 10 and 24. In addition, I found above that pages 17 and 18 contain personal information. I will allow the city to charge a preparation fee to sever the personal information from these four pages of the record.

[81] Generally, this office has accepted that it takes two minutes to sever a page that requires multiple severances.³²

[82] Section 45(1)(b) does not include time for deciding whether or not to claim an exemption.³³ Based on my review of the record, I do not accept the city's arguments that it should be allowed to charge more to sever the record as it is written in a small font or has multiple columns. Part 4 of section 6 of Regulation 823 allows an institution \$7.50 for each 15 minutes spent by any person to sever a part of the record in order to prepare a record for disclosure. Accordingly, I will allow the city \$2.00³⁴ to sever four pages.

[83] The city states that it wants to charge the appellant computer costs to transfer the record to a CD. The appellant asked for the record to be emailed to him in his request. He did not ask for a CD of the record. The record is 33 pages in total. At \$0.20 per page,³⁵ the city is entitled to charge the appellant \$6.60 to photocopy the record. In

³² Orders MO-1169, PO-1721, PO-1834 and PO-1990.

³³ Order P-4, M-376, P-1536.

³⁴ Two minutes per page at \$30.00 per hour for preparation time under section 45(1)(b).

³⁵ See section 45(1)(c) of *MFIPPA* and part 1 of section 6 of Regulation 823.

addition, if the appellant does not want to pick up the record from the city, the city may charge the appellant shipping costs under section 45(1)(d) to ship the record to him.

[84] Accordingly, I find a fee of \$23.60 to be reasonable in this appeal, calculated as follows:

Search time:	0.5 hour (at \$30/hour)	\$15.00
Preparation time:	0.15 hours (4 pages at \$30/hour)	2.00
Photocopies:	33 pages (at \$0.20)	<u>6.60</u>
	Total	<u>\$23.60</u>

ORDER:

1. I uphold the city's fee in the reduced amount of \$23.60.
2. I order the city to disclose the record to the appellant, except for the portions of the record that contain personal information on pages 10, 17, 18 and 24 by **October 17, 2013** but not before **October 11, 2013**. For ease of reference, I have provided the city with a copy of these pages of the record highlighting the personal information that should not be disclosed.
3. In order to verify compliance with order provision 2, I reserve the right to request the city to provide me with a copy of the record provided to the appellant.

Original signed by: _____
Diane Smith
Adjudicator

September 11, 2013 _____