

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-2905

Appeal MA12-265

City of Ottawa

June 25, 2013

Summary: This order addresses an individual's appeal of the fee estimate provided by the City of Ottawa in response to a request for certain expense information for a three-month period. In this order, the adjudicator partly upholds the fee estimate, but disallows the portion of the fee proposed that is related to the cost of severing the responsive records.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 45(1) and Regulation 823, section 6.

OVERVIEW:

[1] This order addresses the appeal of a fee estimate issued by the City of Ottawa (the city) in response to an access request under the *Municipal Freedom of Information and Protection of Privacy Act*. The request sought "all expenses" for three specified months from the city's general ledger for its water, fire hydrant and sewage accounts.

[2] Following receipt of the request, the city issued an interim access decision and fee estimate in the amount of \$300.00. This fee estimate was appealed to this office and a mediator was appointed to explore resolution.

[3] During mediation, the city issued a revised fee estimate of \$150.00, which provided for two hours of search time and three hours for preparing the records for disclosure. The city's revised fee estimate decision also advised that upon payment of

the fee, the appellant could expect to receive access to most of the records, with the exception of information identifying employee salaries, which it intended to withhold under section 14(1) (unjustified invasion of personal privacy), together with the presumption against disclosure in section 14(3)(d) of the *Act*.

[4] Subsequently, the appellant provided some clarification of the scope of his request. The city indicated that it could not further reduce its fee and, since the appellant maintained that the city's fee is not reasonable, no further mediation was possible. Accordingly, the appeal was transferred to the adjudication stage of the appeals process, in which an adjudicator conducts an inquiry under the *Act*.

[5] The adjudicator formerly assigned to this appeal commenced her inquiry by seeking the representations of the city, initially. After the city's representations were received, the appeal was re-assigned to me to continue the inquiry process. I sent a Notice of Inquiry to the appellant, along with a complete copy of the city's representations, seeking his response to the issues. Upon receipt of the appellant's representations, I sought reply representations from the city in relation to the appellant's position on the effect of the clarification of the request he says he provided during mediation. The city submitted brief reply representations. I did not seek sur-reply representations from the appellant, but a copy of the city's reply representations were sent to him for his information.

[6] In this order, I uphold the city's fee estimate, in part.

DISCUSSION:

Is the city's fee reasonable?

[7] The fees required to be paid for access to records under the *Act* are addressed in section 45 and Regulation 823. Section 45(3) of the *Act* provides that the head shall give the requester a "reasonable" estimate of the fee to be charged. That section states:

The head of an institution shall, before giving access to a record, give the person requesting access a reasonable estimate of any amount that will be required to be paid under this *Act* that is over \$25.

[8] 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 fee estimate also assists requesters in deciding whether to narrow the scope of a request in order to reduce the fees.²

¹ Orders P-81, MO-1367, MO-1614, MO-1699, and PO-2299.

² Order MO-1520-I.

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

[10] More specific provisions regarding fees are found in sections 6, 6.1, 7 and 9 of Regulation 823.³ These provisions state:

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.

...

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

³ Section 6.1 of Ontario Regulation 823 relates to fees charged for access to the requester's personal information, and it is not relevant in this appeal.

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. ...

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.

Representations

[11] The city's representations consist of written submissions on the original and revised fee estimates, accompanied by an affidavit sworn by the Access to Information and Privacy Analyst (the analyst) who processed the request. The city submits that the fee estimate was prepared by the analyst with the advice and assistance of Finance Department staff, including a business analyst with experience extracting similar data from the system for audit purposes, an accounting program manager and the financial service unit account manager. The city takes the position that these individuals were well-placed to advise the analyst on the estimate since they were familiar with the data and with the use of the computer systems on which the responsive data is stored.

[12] The analyst describes the sequence of events whereby the estimate was refined from an initial estimate of 31 hours provided by the Finance Department down to 10 hours, following clarification she provided to the department about what activities were chargeable under the fee regulations. The initial fee estimate provided to the appellant consisted of four hours of staff time for search and six hours for preparation, or 10 hours in total. The revised fee estimate of five hours allowed for two hours of search time and three hours for preparation of the records for disclosure.

[13] With respect to the two-hour search component of the revised fee estimate, the city maintains that the data is not stored in one place, but rather has to be pulled from multiple accounts. The search fee reflects the staff time required to identify the relevant account numbers, locate the accounts and extract the detailed expense information requested. According to the city, the search aspect is not simply a matter of identifying "the three accounts of water, fire hydrant and sewage."

[14] Regarding the estimated three hours of preparation, the city submits that this part of the fee includes staff time for the following activities: importing the data into Microsoft Excel; reformatting the data, and severing personal information prior to disclosure to the appellant. With regard to the data, the city notes that the estimated time is based on advice about how the data would be reproduced for disclosure in paper or on CD-ROM in a format "such that it could be understood." As the analyst states, "I understood that the extraction into Microsoft Excel and reformatting was necessary because the data in [the] system would otherwise be unintelligible." The city relies on Order M-1083 for the principle that although an institution cannot charge a fee for the time it takes the computer to extract the information, it may charge for the time

spent by a person on activities required to generate reports. The analyst states that since raw data was being disclosed, she determined that the best way to provide it to the appellant would be to save it on to a CD, along with any codes that would assist him in identifying the information.

[15] The city maintains that in processing the request, it acted in a "fair and reasonable manner" and that many costs likely to be incurred in processing this request were not included in the estimate. As examples, the city mentions the cost codes that would be required for the appellant to understand items detailed on the list of expenses and the \$10 fee for the CD.

[16] The appellant's representations include an introductory section that outlines and describes common accounting systems, practices and terminology. This section includes information about the general ledger and related sub-ledgers as "the core of any company's financial records."

[17] The appellant challenges the amount of the fee assessed based on his view that there is a more efficient means of obtaining the information he has requested than that used (or proposed to be used) by city staff. The appellant describes how the city's accounting software could be better used to extract the data at a lower fee. Based on the amount of the initial fee estimate provided, the appellant expresses the view that the city must be relying on "novice staff" to retrieve the data. The appellant also submits that:

Processors have changed since the [fee] regulation was put in place. ... There are dual cores, quad cores, six core processors but also very fast single multithread processors that reduce significant[ly] the time for any computations. Reality is; I am paying for a computer to save [the requested data] in a different software program while the city employee continues to work on their daily accounting tasks. Am I paying for time on a computer that is very slow compared to others[?]....

[18] In support of the assertion that the city may be using inexperienced staff and/or computers with a slower processing speed, the appellant notes the drop in the fee estimate from a total of 10 hours to five hours. The appellant submits that the city should be relying on "adequately knowledgeable [staff] or a superior user of the [accounting] software to quickly produce these records." The appellant suggests that the city should provide evidence from the accounting software provider's IT department in support of the city's estimate of the search component of its fee estimate.

[19] With regard to his preference for raw data from the expense ledger, the appellant questions whether the city's revised fee estimate accounts for his "revised request ... to print out the Expense Ledgers or Expense Subledgers on a CD in excel and raw data form" because the city's interim decision letter reproduced the wording of

the request as originally submitted. The appellant expresses concern that the city's representations refer to "running reports" when he requested raw data, which he asserts would not be in the form of a report. Further, the appellant submits that if manual search and extraction of the data is necessary, the city must be using "legacy" (i.e., outdated) software.

[20] In reply to the appellant's questioning of the fee estimate and the request clarification provided during mediation, the city submits that the appellant's refinement of the wording did not narrow the scope of his request, and the information responsive to both the initial and allegedly "revised" request is the same. The city also submits that the appellant's "distinction between types of ledgers and accounting methods ... has no effect on either the search or retrieval of the responsive records..."

Analysis and findings

[21] In reviewing the city's fee estimate, my responsibility is to ensure that the amount estimated is reasonable in the circumstances, and that it has been calculated in accordance with the *Act*. In this regard, the burden of establishing the reasonableness of the estimate rests with the city.⁴ The city must discharge this burden by providing an adequate explanation of how the fee estimate was calculated and by producing sufficiently detailed evidence to support its claim. Based on the evidence provided by the city, I may uphold the fee estimate or vary it.

[22] First, I wish to address the appellant's concern that the city's fee estimate may not account for the "revised" wording to be applied to the request, as clarified during mediation. The appellant has suggested that the fee may be reduced because "a simpler method of accessing the accounting records" would be possible if the city simply downloaded the requested data from the relevant expense ledger/journal. In this regard, I am satisfied by the city's evidence that the information that is responsive to the request remains the same, whether it be drawn from the initial wording (General Ledger) or the modified wording (Expense Ledger/Sub-ledger).

[23] I acknowledge that the appellant alludes to alternative methods of identifying and producing responsive records that he believes would be more efficient than those chosen by the city. I also acknowledge the appellant's comments on the possibility that the city may be using inexperienced staff and/or outdated computer hardware. Ultimately, however, the *Act* does not require that records be maintained by an institution in a particular manner or, more specifically, in a manner most advantageous to a requester.⁵ Having said that, I accept that the Finance Department staff who assisted the city's access and privacy analyst in preparing the fee estimate were experienced with the city's accounting systems and practices and already familiar with extracting the type of information that is responsive to the request.

⁴ Order 86.

⁵ See Orders MO-1336, MO-1367 and MO-1854.

[24] Under section 45 of the *Act* and Regulation 823, the city is *required* to charge specific amounts for certain actions carried out in processing a request. In reviewing the fee in this appeal, I have considered the representations of the appellant and the city, as well as the communications exchanged during earlier stages of the appeal between the parties and this office. Having done so, I find that the basis for the calculation of the fee by the city is reasonable in most respects, and I uphold it, in part, for the reasons that follow.

[25] Under section 45(1)(a), an institution shall charge fees for the "costs of every hour of manual search required to locate a record." In this appeal, I noted the city's indication that the identified business analyst had "extracted similar data as part of a year-end audit in the past." This suggests a certain familiarity with the method of extracting the data that might have a limiting effect on the amount of the search fee. However, the request identifies the months of October, November and December 2011 for three different components of the "water billing:" i.e., charges for water use, sewer and fire supply. In this regard, I accept the city's evidence that multiple cost centres and accounts comprise the water use, sewer and fire supply and must be separately queried for the purpose of identifying the responsive information for each of the requested months and components. Accordingly, I find that the city's revised estimate of two hours for search under section 45(1)(a) of the *Act* – at \$30.00 per hour – is reasonable in the circumstances, and I will allow the city to charge \$60.00, as claimed.

[26] Section 45(1)(b) addresses the fees that shall be charged for preparation of a record, or responsive information, for disclosure to a requester. It includes time for running reports from a computer system and for severing records to remove exempt information.⁶ Although the appellant expresses concern about the city proposing to prepare reports when what he seeks is "raw data," I am satisfied that the use of the word "report" relates to the city needing to find a convenient label for the responsive information or record, which will be a compilation of data extracted from its accounting systems. In that context, I see nothing wrong with use of the word "report."

[27] The city's preparation fee is broken down into three components of data extraction (into Excel), reformatting and severance of exempt information. I am satisfied that the city may properly charge for each of these described activities, in principle. However, on the evidence before me, a question arises regarding the volume of information that must be prepared for disclosure. The analyst's affidavit refers to having requested, upon receipt of the request, that the Finance Department provide "the number of pages or CDs that needed to be reproduced," but there is nothing further in the affidavit to quantify the data, other than statements suggesting that one CD would be required.⁷ Furthermore, while this office has accepted that it takes two minutes to sever a page that requires multiple severances,⁸ it is not possible to assign

⁶ See Orders M-1083 and P-4, respectively.

⁷ At paragraphs 4 and 10.

⁸ Orders MO-1169, PO-1721, PO-1834, and PO-1990.

any value to the activity of severance to data on a CD, particularly in the absence of evidence as to the quantum of responsive information.⁹ Accordingly, without evidence of the volume of the responsive information, the preparation component of the city's fee is presumptively unreasonable.

[28] Further, since the city did not separately apportion the three hours of preparation time for the activities of extraction, reformatting and severance, I must settle on a reasonable reduction in the preparation fee to account for the disallowed severance component. In the circumstances, including consideration of the fee concessions already inherent in the revised estimate (which are to the appellant's benefit), I will only permit the city to charge for two hours of preparation time under section 45(1)(b), or \$60.00.

[29] I have varied the city's fee estimate to reflect my findings regarding the preparation component, with the result being that the fee is reduced by 20%, representing \$60.00 for search under section 45(1)(a) and \$60.00 for preparation under section 45(1)(b) for a total of \$120.00.

ORDER:

I uphold the city's fee in the reduced amount of \$120.00.

Original signed by: _____
Daphne Loukidelis
Adjudicator

_____ June 25, 2013

⁹ For a similar situation, see Order MO-2471.