

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-2935

Appeal MA11-279-2

Festival Hydro Services Inc.

August 29, 2013

Summary: The appellant sought access to records about Wi-Fi transmitters in the City of Stratford (the city). The request was transferred from the city to Festival Hydro Services Inc. (FHSI), which denied access citing the discretionary exemptions in sections 11 (economic and other interests) and 15(a) (publicly available information). FHSI also charged a fee of \$60.00. In this order, disclosure of the record withheld under section 11 is ordered. The adjudicator does not uphold FHSI's decision under section 15(a) with respect to other responsive information that is publicly available and orders this information disclosed. This order also disallows the \$60.00 fee, in its entirety.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 11(a), (c) and (d), 15(a), 45(1).

OVERVIEW:

[1] The City of Stratford (the city) 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 Rhyzome 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 that the City of Stratford submitted to the Intelligent Community Forum in its attempt to be named one of the Top 7 Intelligent Communities in the world.

[2] The city forwarded the request to Festival Hydro Services Inc. (FHSI) as it appeared that some of the requested records may be in its custody or control or it may have a greater interest in these records.

[3] FHSI issued a decision in which it stated that it considered the request to be frivolous and vexatious and overly broad in its scope. FHSI cited the application of section 20.1 (frivolous request) of the *Act*. FHSI went on to state that even if the request was not frivolous and vexatious, it would not release any records as the request pertains to technical and scientific information that has monetary value to it. On this point, FHSI raised the application of sections 11(a), (c) and (d) (economic and other interests).

[4] The requester (now the appellant) appealed FHSI's decision to this office and Appeal MA11-279 was opened.

[5] During the mediation stage of the appeal process, FHSI confirmed that it is no longer claiming that the appellant's request is frivolous and vexatious. Accordingly, the application of section 20.1 was no longer at issue.

[6] FHSI issued a revised decision letter signed by the President, Festival Hydro Services Inc. operating as Rhyzome Networks. In this decision, it advised the appellant that the information relating to the "equipment used" is publicly available and it provided a link to the www.rhyzome.ca website where it stated that this information could be found. FHSI confirmed that it was denying access to the location of Wi-Fi transmitters on city streets and within municipal buildings, as well as to the sales of Wi-Fi in a named subdivision, pursuant to sections 11(a), (c) and (d) of the *Act*. FHSI also advised that there would be a fee for search and preparation time in the total amount of \$60.00.

[7] The appellant appealed FHSI's revised decision. Appeal MA11-279 was closed and this office opened appeal MA11-279-2 to deal with issues raised by the revised decision.

[8] As mediation did not resolve the issues in this appeal, the file was transferred to the adjudication stage for an inquiry. During adjudication, the issue of the application of the public interest override in section 16 of the *Act* was raised by the appellant. This issue was added to the appeal. Representations were then exchanged between the parties in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*. In his representations, the appellant confirmed that he was not seeking access to the sales figures in the named subdivision.

[9] In this order, I order disclosure of the record withheld under section 11 and the other responsive information withheld under section 15(a). I also disallow FHSI's \$60.00 fee, in its entirety.

RECORD:

[10] FHSI has refused to disclose one specific record (the record), which is a five-page list containing the city street or municipal building locations of FHSI's Wi-Fi transmitters in the City of Stratford.

[11] There is also other information at issue in this appeal concerning the specifications of the Wi-Fi equipment. FHSI has refused to disclose this information under section 15(a) as being publicly available information.

ISSUES:

- A. Do the discretionary economic and other interests exemptions at section 11(a), (c) and (d) apply to the record?
- B. Does the discretionary publicly available information exemption at section 15(a) apply to the Wi-Fi equipment specifications?
- C. Should the \$60.00 fee be upheld?

DISCUSSION:

A. Do the discretionary economic and other interests exemptions at section 11(a), (c) and (d) apply to the record?

[12] Sections 11 states, in part:

A head may refuse to disclose a record that contains,

- (a) trade secrets or financial, commercial, scientific or technical information that belongs to an institution and has monetary value or potential monetary value;
- (c) information whose disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
- (d) information whose disclosure could reasonably be expected to be injurious to the financial interests of an institution;

[13] The purpose of section 11 is to protect certain economic interests of institutions. The report titled *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980*, vol. 2 (Toronto: Queen's Printer, 1980) (the Williams Commission Report) explains the rationale for including a "valuable government information" exemption in the *Act*:

In our view, the commercially valuable information of institutions such as this should be exempt from the general rule of public access to the same extent that similar information of non-governmental organizations is protected under the statute . . . Government sponsored research is sometimes undertaken with the intention of developing expertise or scientific innovations which can be exploited.

[14] For sections 11(c) or (d) to apply, the institution must demonstrate that disclosure of the record “could reasonably be expected to” lead to the specified result. To meet this test, the institution must provide “detailed and convincing” evidence to establish a “reasonable expectation of harm”. Evidence amounting to speculation of possible harm is not sufficient.¹

[15] The need for public accountability in the expenditure of public funds is an important reason behind the need for “detailed and convincing” evidence to support the harms outlined in section 11.²

[16] Parties should not assume that harms under section 11 are self-evident or can be substantiated by submissions that repeat the words of the *Act*.³

[17] The fact that individuals or corporations doing business with an institution may be subject to a more competitive bidding process as a result of the disclosure of their contractual arrangements does not prejudice the institution’s economic interests, competitive position or financial interests.⁴

[18] In its representations, FHSI states that:

FHSI denied access to the locations of the equipment that comprises the network on the basis of section 11(a), (c) and (d). A summary of FHSI’s position is by providing this information a person would gain technical information regarding the design and layout of the Wi-Fi network which could be used for a technical advantage in designing and supplying Wi-Fi information and services to third parties.

FHSI is in the business of communications and providing consulting and other services to third parties related to Wi-Fi systems. As such, the information regarding siting and locating the equipment has commercial value in laying out, designing and operating a Wi-Fi network. Communications and Wi-Fi system design is a technical field involving engineering and experience, and is of a nature that meets the first requirement of 11(a).

The information belongs to it in the sense that providing the information to others would allow a reverse engineering of the system and disclose certain information in the approach to Wi-Fi system design. The Wi-Fi field is incredibly competitive and the information provides FHSI with a

¹ *Ontario (Workers’ Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.).

² Orders MO-1947 and MO-2363.

³ Order MO-2363.

⁴ See Orders MO-2363 and PO-2758.

competitive advantage in system design which FHSI will use in future opportunities. As such FHSI is of the view it meets the remainder of the criteria in 11(a).

[19] The appellant did not directly address the section 11 arguments of FHSI in his representations.

Section 11(a): information that belongs to government

[20] For section 11(a) to apply, the institution must show that the information:

1. is a trade secret, or financial, commercial, scientific or technical information;
2. belongs to an institution; and
3. has monetary value or potential monetary value.

Part 1: type of information

[21] The record at issue consists of a list of the location of Wi-Fi transmitters on city streets and within municipal buildings. As set out above, FHSI maintains that the record contain technical, financial and commercial information. These types of information, as listed in section 11(a), have been discussed in prior orders:

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.⁵

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.⁶

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

⁵ Order PO-2010.

⁶ Order PO-2010.

application to both large and small enterprises.⁷ The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information.⁸

[22] Based on my review of the record, I find that it contains commercial information as it relates to the provision of Wi-Fi services by FHSI.

[23] I do not agree with FHSI that the record contains technical information. The record merely lists the location of Wi-Fi transmitters. FHSI has not provided any evidence that this specific information was prepared by a professional in the field.

[24] I further find that the record does not contain financial information. There are no monetary figures in the record. None of the information in the record relates to money and its use or distribution, nor does the record contain or refer to specific data.

[25] Accordingly, as the record contains commercial information, I find that part 1 of the test under section 11(a) has been met.

Part 2: belongs to

[26] The term “belongs to” refers to “ownership” by an institution. It is more than the right simply to possess, use or dispose of information, or control access to the physical record in which the information is contained. For information to “belong to” an institution, the institution must have some proprietary interest in it either in a traditional intellectual property sense – such as copyright, trade mark, patent or industrial design – or in the sense that the law would recognize a substantial interest in protecting the information from misappropriation by another party.

[27] Examples of the latter type of information may include trade secrets, business-to-business mailing lists,⁹ customer or supplier lists, price lists, or other types of confidential business information. In each of these examples, there is an inherent monetary value in the information to the organization resulting from the expenditure of money or the application of skill and effort to develop the information. If, in addition, the information is consistently treated in a confidential manner, and it derives its value to the organization from not being generally known, the courts will recognize a valid interest in protecting the confidential business information from misappropriation by others.¹⁰

⁷ Order PO-2010.

⁸ Order P-1621.

⁹ Order P-636.

¹⁰ Order PO-1736, upheld on judicial review in *Ontario Lottery and Gaming Corporation v. Ontario (Information and Privacy Commissioner)*, [2001] O.J. No. 2552 (Div. Ct.). See also Orders PO-1805, PO-2226 and PO-2632.

[28] I find that part 2 of the test under section 11(a) has not been met. The information in the record is about the location of Wi-Fi transmitters. FHSI has not provided any evidence that it has some proprietary interest in the list in question in a traditional intellectual property sense, such as copyright, trade mark, patent or industrial design. Nor has FHSI provided evidence that there is an inherent monetary value in the information to the organization resulting from the expenditure of money or the application of skill and effort to develop the information.

[29] Furthermore, FHSI has not provided evidence that the information at issue has been consistently treated in a confidential manner and that it derives its value to the organization from not being generally known. There are numerous Wi-Fi transmitter locations listed in the record. These transmitters were installed on city streets or at municipal buildings locations. The appellant states in his request and in his representations that there are two Wi-Fi transmitters close to his home in his direct line of sight. FHSI did not respond to this statement in its representations that the locations of the WI-FI transmitters are visible to the public.

[30] Accordingly, I find that part 2 of the test under section 11(a) has not been met. For the sake of completeness, I will consider whether part 3 of the test under section 11(a) has been met.

Part 3: monetary value

[31] To have "monetary value", the information itself must have an intrinsic value. The purpose of this section is to permit an institution to refuse to disclose a record where disclosure would deprive the institution of the monetary value of the information.¹¹

[32] The fact that there has been a cost to the institution to create the record does not mean that it has monetary value for the purposes of this section.¹² In addition, the fact that the information has been kept confidential does not, on its own, establish this exemption.¹³

[33] FHSI did not provide representations on whether the disclosure of the record would deprive the institution of the monetary value of the information, other than stating that disclosure could reveal certain information in its approach to Wi-Fi system design. From my review of the record and the representations, it appears that the locations listed in the record are only for a specific area in the city and only for two types of locations in the city. FHSI has not indicated in its representations that revealing the information in the record by itself could allow another organization to construct a Wi-Fi system in the City of Stratford that could compete with FHSI's system for

¹¹ Orders M-654 and PO-2226.

¹² Orders P-1281 and PO-2166.

¹³ Order PO-2724.

customers. Nor has FHSI indicated how the information in the record could be used by other organizations in other locations to deprive FHSI of the monetary value or potential monetary value of the information in the record.

[34] Accordingly, I find that part 3 of the test under section 11(a) has not been met and that this exemption does not apply.

Section 11(c): prejudice to economic interests

[35] The purpose of section 11(c) is to protect the ability of institutions to earn money in the marketplace. This exemption recognizes that institutions sometimes have economic interests and compete for business with other public or private sector entities, and it provides discretion to refuse disclosure of information on the basis of a reasonable expectation of prejudice to these economic interests or competitive positions.¹⁴

[36] This exemption is arguably broader than section 11(a) in that it does not require the institution to establish that the information in the record belongs to the institution, that it falls within any particular category or type of information, or that it has intrinsic monetary value. The exemption requires only that disclosure of the information could reasonably be expected to prejudice the institution's economic interests or competitive position.¹⁵

[37] FHSI has only provided general submissions on the application of section 11(c) stating that the information at issue in the record provides it with a competitive advantage in system design which it will use in future opportunities. FHSI does not indicate how the specific information at issue, the streets and municipal buildings where its Wi-Fi transmitters are located in the City of Stratford, could reasonably be expected to be utilized by its competitors such as to cause prejudice to its economic interests or competitive position.

[38] I find that I have not been provided with sufficient "detailed and convincing" evidence that disclosure of the information in the record could reasonably be expected to prejudice the economic interests or competitive position of FHSI. Accordingly, I find that section 11(c) does not apply to exempt the record.

Section 11(d): injury to financial interests

[39] FHSI did not provide direct representations on how disclosure of the information in the record could reasonably be expected to be injurious to its financial interests under section 11(d). Relying on my analysis above for section 11(c), I find that the record is not exempt by reason of section 11(d).

¹⁴ Orders P-1190 and MO-2233.

¹⁵ Orders PO-2014-I, MO-2233, MO-2363, PO-2632 and PO-2758.

[40] As none of the exemptions claimed by FHSI apply, I find that the record is not exempt by reason of sections 11(a), (c) or (d) and I will order it disclosed. As I have ordered the record disclosed, it is not necessary to consider whether the public interest override in section 16 of the *Act* applies to override the application of the sections 11(a), (c) and (d) exemptions.

B. Does the discretionary publicly available information exemption at section 15(a) apply to the information about the Wi-Fi equipment specifications?

[41] FHSI has denied access pursuant to section 15(a) of the *Act* to certain information responsive to the request as it is publicly available. This information is about the type of equipment used by FHSI to transmit Wi-Fi and the frequencies and power strength that is emitted by this equipment. During the course of mediation, the appellant advised the mediator that he checked the website information provided in the decision letter and stated that he was unable to locate the information.

[42] Section 15(a) states:

A head may refuse to disclose a record if,

the record or the information contained in the record has
been published or is currently available to the public;

[43] For this section to apply, the institution must establish that the record is available to the public generally, through a regularized system of access, such as a public library or a government publications centre.¹⁶

[44] To show that a "regularized system of access" exists, the institution must demonstrate that

- a system exists
- the record is available to everyone, and
- there is a pricing structure that is applied to all who wish to obtain the information¹⁷

[45] Section 15(a) is intended to provide an institution with the option of referring a requester to a publicly available source of information where the balance of

¹⁶ Orders P-327, P-1387 and MO-1881.

¹⁷ Order MO-1881.

convenience favours this method of alternative access. It is not intended to be used in order to avoid an institution's obligations under the *Act*.¹⁸

[46] In order to rely on the section 15(a) exemption, the institution must take adequate steps to ensure that the record that they allege is publicly available is the record that is responsive to the request.¹⁹

[47] Section 15(a) does not permit an institution to sever a small amount of information from a larger record, particularly where the entire record is otherwise subject to disclosure under the *Act*. A requester should not be required to compile small pieces of information from a variety of sources in order to obtain a complete version of a record that could be disclosed.²⁰

[48] Examples of the types of records and circumstances that have been found to qualify as a "regularized system of access" include:

- unreported court decisions²¹
- statutes and regulations²²
- property assessment rolls²³
- septic records²⁴
- property sale data²⁵
- police accident reconstruction records²⁶
- orders to comply with property standards.²⁷

[49] The exemption may apply despite the fact that the alternative source includes a fee system that is different from the fees structure under the *Act*.²⁸ However, the cost of accessing a record outside the *Act* may be so prohibitive that it amounts to an effective denial of access, in which case the exemption would not apply.²⁹

[50] FHSI states that it refused to disclose certain technical information about the equipment it uses to transmit Wi-Fi as it is publicly available on the Rhyzome website.³⁰

¹⁸ Orders P-327, P-1114 and MO-2280.

¹⁹ Order MO-2263.

²⁰ Order PO-2641.

²¹ Order P-159.

²² Orders P-170 and P-1387.

²³ Order P-1316.

²⁴ Order MO-1411.

²⁵ Order PO-1655.

²⁶ Order MO-1573.

²⁷ Order MO-2280.

²⁸ Orders P-159, PO-1655, MO-1411 and MO-1573.

²⁹ Order MO-1573.

³⁰ See www.rhyzome.ca.

It states that information on the equipment would be available on the equipment manufacturer's website.³¹

[51] FHSI further states that the Rhyzome website³² describes the nature of the technology/equipment and the applicable performance specifications as being: "via wireless mesh technology using *IEEE 802.11N Wi-Fi*". FHSI states that more information regarding these specifications is available on the IEEE website, <http://standards.ieee.org/about/get/>, which has free access. It also provided various links to additional responsive information on this website.

[52] The appellant did not provide representations on this issue.

Analysis/Findings

[53] The appellant has sought access to:

...the type of [Wi-Fi transmitters on city streets and within municipal buildings], the frequencies that are transmitted from that equipment and the power strength that is emitted by that equipment.

[54] In response, FHSI has referred the appellant to three websites.³³ All three websites contain information about numerous items. Two of the websites are links to the home page of the organization.³⁴ FHSI has not indicated where to locate the responsive information on these two websites. Although FHSI advises the appellant to review 11 links on the third website,³⁵ to reference "...the standard which could be used to obtain specific information from the internet," FHSI merely repeats the names of the 11 links found on this website page.

[55] I find that FHSI has not informed the appellant on how he may obtain the responsive information. Although FHSI states that the equipment used is manufactured by Motorola, it does not state which Motorola Wi-Fi transmitters it is utilizing in the City of Stratford. FHSI also does not indicate which of the 11 links on the <http://standards.ieee.org/about/get/> website is to be accessed to ascertain the frequencies and power strength that is emitted by these Motorola Wi-Fi transmitters.

[56] Accordingly, I find that FHSI has not provided information that can allow the appellant to identify the specific location of the responsive information in order to allow this information to be identified.³⁶

³¹ The equipment was manufactured by Motorola.

³² See www.rhyzome.ca.

³³ See <http://www.motorola.ca>, www.rhyzome.ca, and <http://standards.ieee.org/about/get/>.

³⁴ See <http://www.motorola.ca> and www.rhyzome.ca.

³⁵ See <http://standards.ieee.org/about/get/>.

³⁶ See Orders P-123 and P-191.

[57] Based on my review of FHSI's representations, and after checking the website information provided by FHSI in its representations, I find that the requested information is not currently available to the public. I find that section 15(a) of the *Act* does not apply and does not permit FHSI to deny access to information about the type of equipment it uses to transmit Wi-Fi and the frequencies and power strength that is emitted by this equipment. Accordingly, I find that section 15(a) does not exempt this information from the *Act* and I will order it disclosed.

C. Should the \$60.00 fee be upheld?

[58] Where the fee exceeds \$25, an institution must provide the requester with a fee estimate.³⁷

[59] 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.³⁸

[60] The fee estimate also assists requesters to decide whether to narrow the scope of a request in order to reduce the fees.³⁹

[61] In all cases, the institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated.⁴⁰

[62] 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.

[63] 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

³⁷ Section 45(3).

³⁸ Orders P-81, MO-1367, MO-1479, MO-1614 and MO-1699.

³⁹ Order MO-1520-I.

⁴⁰ Orders P-81 and MO-1614.

- (e) any other costs incurred in responding to a request for access to a record.

[64] 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.

[65] FHSI states in its representations that it:

...estimated a charge of \$60.00 based upon the hourly rate of \$30. The information required a search of various information and databases and the severing of information to the geographic area specified in the request.

[66] The appellant did not provide representations on the \$60.00 fee.

Analysis/Findings

[67] In the Notice of Inquiry sent to FHSI, it was asked the following concerning the search fee and preparation time charged:

Search – Section 45(1)(a)

How are the requested records kept and maintained?

What actions are necessary to locate the requested records? What is the estimated or actual amount of time involved in each action?

Section 45(1)(a) does not include the search time for

- manually searching a record for the requester's personal information⁴¹

Preparation for disclosure - Section 45(1)(b)

Section 45(1)(b) includes time for

- severing a record⁴²
- a person running reports from a computer system⁴³

Generally, this office has accepted that it takes two minutes to sever a page that requires multiple severances⁴⁴

Section 45(1)(b) does not include time for

- deciding whether or not to claim an exemption⁴⁵
- identifying records requiring severing⁴⁶
- identifying and preparing records requiring third party notice⁴⁷
- removing paper clips, tape and staples and packaging records for shipment⁴⁸
- transporting records to the mailroom or arranging for courier service⁴⁹
- assembling information and proofing data⁵⁰

⁴¹ Regulation 823, section 6.1.

⁴² Order P-4.

⁴³ Order M-1083.

⁴⁴ Orders MO-1169, PO-1721, PO-1834 and PO-1990.

⁴⁵ Orders P-4, M-376 and P-1536.

⁴⁶ Order MO-1380.

⁴⁷ Order MO-1380.

⁴⁸ Order PO-2574.

⁴⁹ Order P-4.

- photocopying⁵¹
- preparing an index of records or a decision letter⁵²
- re-filing and re-storing records to their original state after they have been reviewed and copied PO-2574.
- preparing a record for disclosure that contains the requester's personal information⁵³

What actions are required to prepare the records for disclosure? What amount of time is involved in each action?

Computer and other costs incurred in locating, retrieving, processing and copying a record – Section 45(1)(c)

Section 45(1)(c) includes the cost of

- photocopies
- computer printouts and/or CD-ROMs
- developing a computer program

Are photocopies, CD-ROMs and/or computer printouts required? If so, how many?

Is it necessary to develop a computer program or other method of producing a record from a machine readable record? If so, what actions are required, and what is the time involved?

Has the institution received an invoice for any other costs, including computer costs, for locating, retrieving, processing and copying the records? If so, what is the amount of the invoice? If so, please provide a copy.

Are there any other costs the institution would incur or has incurred in locating, retrieving, processing and copying the records? If so, please explain.

⁵⁰ Order M-1083.

⁵¹ Orders P-184 and P-890.

⁵² Orders P-741 and P-1536.

⁵³ Regulation 823, section 6.1.

Section 45(1)(c) does not include the cost of

- a computer to compile and print information⁵⁴

Shipping costs - Section 45(1)(d)

Are there any shipping costs involved in responding to the request?
Please explain.

Section 45(1)(d) does not include the cost of

- correspondence to notify affected parties or discharge other general responsibilities under the *Act*⁵⁵

Other costs -Section 45(1)(e)

Section 45(1)(e) is intended to cover general administrative costs resulting from a request which are similar in nature to those listed in paragraphs (a) through (d), but not specifically mentioned.⁵⁶

Section 45(1)(e) does not include

- time for responding to the requester⁵⁷
- time for responding to this office during the course of an appeal⁵⁸
- legal costs associated with the request⁵⁹
- comparing records in a request with those in another request for consistency⁶⁰
- GST⁶¹
- costs, even if invoiced, that would not have been incurred had the request been processed by the institution's staff⁶²

⁵⁴ Order M-1083.

⁵⁵ Order MO-2274.

⁵⁶ Order MO-1380.

⁵⁷ Order MO-1380.

⁵⁸ Order MO-1380.

⁵⁹ Order MO-1380.

⁶⁰ Order MO-1532.

⁶¹ Order MO-2274.

⁶² Order P-1536.

- coordinating a search for records⁶³

Are there other costs involved in responding to the request? Please explain.

[68] FHSI did not respond to these questions posed in the Notice of Inquiry as to how it arrived at its fee of \$60.00. In reviewing FHSI's fee, my responsibility under 45(5) of the *Act* is to ensure that the amount of fee is reasonable in the circumstances. The burden of establishing the reasonableness of the fee lies with FHSI. In order to discharge this burden, the institution must provide a detailed explanation of how the fee has been calculated, and how each individual component of the overall fee fits within the scope of the *Act* and regulations.⁶⁴

[69] In its representations, FHSI has not provided a detailed breakdown of the time required to search for the record, the amount of time needed to prepare the record for disclosure and the photocopying and other costs. FHSI representations indicate that the \$60.00 amount is a fee estimate, however, the record has been located and FHSI did not provide representations on the amount of the actual time it spent to locate and prepare the record for disclosure.

[70] Although FHSI states in its representations that it "estimated a charge of \$60.00 based upon the hourly rate of \$30.00," both search and preparation time under section 6 of Regulation 823 allows an institution to charge \$30.00 per hour. FHSI did not indicate how this hourly rate was broken down between search and preparation time. Nor did it indicate what actions were necessary to locate and prepare the record for disclosure.

[71] Accordingly, I am disallowing the entire \$60.00 fee charged by FHSI.

ORDER:

1. I disallow FHSI's fee of \$60.00, in its entirety.
2. I order FHSI to provide the appellant, at no charge, with a copy of the five-page record that lists the street or municipal building locations of FHSI's Wi-Fi transmitters by no later than **September 20, 2013**.
3. I order FHSI to disclose to the appellant, at no charge, information about the type of equipment, located on City of Stratford streets and municipal buildings, used by it to transmit Wi-Fi and the frequencies and power strength that is emitted by this equipment by no later than **September 20, 2013**.

⁶³ Order PO-1943.

⁶⁴ Orders P-1536 and MO-2913.

4. In order to verify compliance with provisions 2 and 3 of this order, I reserve the right to require FHSI to provide me with a copy of the records that it sends to the appellant.

Original signed by: _____
Diane Smith
Adjudicator

_____ August 29, 2013