

Information and Privacy Commissioner,  
Ontario, Canada



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

---

## ORDER MO-2961

Appeal MA12-545

The Regional Municipality of York

October 7, 2013

**Summary:** The municipality received a request for a complete copy of the appellant's Ontario Works file, as well as any records relating to his appeal to the Social Benefits Tribunal. The municipality issued an interim decision granting complete access to the responsive records upon payment of a fee of \$188.40, which it later reduced to \$94.20. The appellant appealed the quantum of the fee and the municipality's decision not to grant a fee waiver. In this decision, the adjudicator upholds the amount of the fee and determines that a fee waiver is warranted in the circumstances. He finds that the payment of the fee would cause the appellant financial hardship and that it is fair and equitable that the fee be waived owing to the unique circumstances present in this case.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 45(1) and (4), Regulation 823, sections 6.1 and 8.

### OVERVIEW:

[1] The Regional Municipality of York (the municipality) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records in the requester's Ontario Works file and any records related to his Social Benefits Tribunal appeal. The municipality located his Ontario Works file, which consists of 942 pages, and issued an interim fee decision. The interim fee estimate provided that access to the records, with appropriate severances (if any) made, would

be granted upon payment of the fee of \$188.40 for the cost of photocopying (at \$.20 per page), only.

[2] The municipality requested payment of a deposit of \$94.20 before proceeding further with the request. The municipality stated that all or part of the fee could be waived on the basis of financial hardship or if the dissemination of the record would benefit public health or safety.

[3] The requester asked the municipality for a fee waiver and received a 50% waiver of the fee, reducing the amount required to \$94.20. The municipality advised the requester that it "is unable, from your request, to determine whether the payment will cause financial hardship, but will reduce the fee by half to minimize any potential burden." The municipality also invited the requester to attend its offices to view his file to identify the records that he needs.

[4] The requester (now the appellant) appealed the municipality's fee estimate and its decision not to grant a complete waiver of the fee.

[5] During mediation, the mediator held discussions with both the appellant and the municipality. The appellant indicated that he wished to obtain access to his entire Ontario Works file in order to determine if all relevant records were included in the disclosure package provided for an upcoming Social Benefits Tribunal hearing. The appellant advised the mediator that he was unable to review the file at the municipality's office because of his physical limitations.

[6] With regards to the fee estimate, the appellant believes that it is excessive and advised the mediator that payment would cause him financial hardship. After discussions with the mediator, the appellant submitted documentation pertaining to his income and expenses, in support of his position that the payment of the fee would cause a financial hardship. With the appellant's consent, the mediator provided the documentation to the municipality for reconsideration of the appellant's fee waiver request.

[7] Upon review of the documentation, the municipality advised the mediator that the appellant's request for a fee waiver was declined, because, in its view, "there was no compelling evidence supporting [his] request for a full waiver of fees." The municipality advised that it would maintain its position with regards to waiving 50% of the fee.

[8] Upon relaying the municipality's decision to the appellant, the appellant indicated that he was dissatisfied with the decision and wished to pursue his appeal on both the fee and fee waiver issues.

[9] As no further mediation was possible, the appeal was moved to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry under the *Act*. I began my inquiry by seeking the representations of the municipality, as it bears the onus of establishing the appropriateness of the fee and its decision to deny a fee waiver. A complete copy of the municipality's representations was provided to the appellant, who also submitted representations.

[10] In this order, I uphold the municipality's interim fee decision, but do not uphold its decision not to waive the fee.

## **ISSUES:**

**A. Should the fee estimate be upheld?**

**B. Should the fee be waived?**

## **DISCUSSION:**

**Issue A: Should the fee estimate be upheld?**

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

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

- the actual work done by the institution to respond to the request, or
- a review of a representative sample of the records and/or the advice of an individual who is familiar with the type and content of the records [Order MO-1699].

[13] 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<sup>1</sup>. The fee estimate also assists requesters to decide whether to narrow the scope of a request in order to reduce the fees [Order MO-1520-I]. In all cases, the institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated [Orders P-81 and MO-1614].

[14] 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.

---

<sup>1</sup> Orders P-81, MO-1367, MO-1479, MO-1614 and MO-1699.

[15] 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.

[16] More specific provisions regarding fees are found in sections 6, 6.1, 7 and 9 of Regulation 823. Paragraph 1 of section 6.1 sets out the appropriate fees for photocopying when the requester is seeking access to his or her own personal information, as is the case in this appeal. This provision reads:

6.1 The following are the fees that shall be charged for the purposes of subsection 45(1) of the Act for access to personal information about the individual making the request for access:

- 1. For photocopies and computer printouts, 20 cents per page.

[17] In his representations, the appellant does not appear to take issue with the amount of the fee estimate provided by the municipality. The municipality submits that the charges it has calculated for photocopying expenses are in accordance with the requirements of paragraph 1 of section 6.1 of Regulation 823. Based on the number of pages of records that are considered responsive to the request that have been identified by the municipality, I find that the amount calculated for photocopying is in keeping with the requirements of paragraph 1 of section 6.1 of the regulation. Accordingly, I uphold the municipality's fee estimate, in its entirety.

## **Issue B. Should the fee be waived?**

### **General principles**

[18] Section 45(4) of the *Act* requires an institution to waive fees, in whole or in part, in certain circumstances. Section 8 of Regulation 823 sets out additional matters for a head to consider in deciding whether to waive a fee. Those provisions state:

45. (4) A head shall waive the payment of all or any part of an amount required to be paid under subsection (1) if, in the head's opinion, it is fair and equitable to do so after considering,

- (a) the extent to which the actual cost of processing, collecting and copying the record varies from the amount of the payment required by subsection (1);
- (b) whether the payment will cause a financial hardship for the person requesting the record;
- (c) whether dissemination of the record will benefit public health or safety; and
- (d) any other matter prescribed by the regulations.

8. The following are prescribed as matters for a head to consider in deciding whether to waive all or part of a payment required to be made under the Act:

1. Whether the person requesting access to the record is given access to it.
2. If the amount of a payment would be \$5 or less, whether the amount of the payment is too small to justify requiring payment.

[19] The fee provisions in the *Act* establish a user-pay principle which is founded on the premise that requesters should be expected to carry at least a portion of the cost of processing a request unless it is fair and equitable that they not do so. The fees referred to in section 45(1) and outlined in section 8 of Regulation 823 are mandatory unless the requester can present a persuasive argument that a fee waiver is justified on the basis that it is fair and equitable to grant it or the *Act* requires the institution to waive the fees [Order PO-2726].

[20] A requester must first ask the institution for a fee waiver, and provide detailed information to support the request, before this office will consider whether a fee waiver should be granted. This office may review the institution's decision to deny a request for a fee waiver, in whole or in part, and may uphold or modify the institution's decision<sup>2</sup>.

The institution or this office may decide that only a portion of the fee should be waived [Order MO-1243].

## **Part 1: basis for fee waiver**

### ***Section 45(4)(b): financial hardship***

[21] For section 45(4)(b) to apply, the requester must provide some evidence regarding his or her financial situation, including information about income, expenses, assets and liabilities<sup>3</sup>.

[22] In this appeal, the appellant argues that the payment of the fee of \$94.20 will cause him financial hardship. In support of his position, he provided the mediator, who then passed along to the municipality, copies of his and his wife's 2011 Notice of Assessment, salary statements relating to the appellant's wife, the appellant's own disability earnings and a bank statement setting out his monthly expenses and income.

[23] During the inquiry process, the appellant also provided me with the Notices of Assessment for the year 2012 pertaining to both himself and his wife.

[24] The municipality has provided me with a chronology of the events surrounding this appeal and other concurrent proceedings, which was very helpful in better understanding the background of this matter. The appellant has appealed a decision of the municipality relating to his eligibility for Ontario Works benefits to the Social Benefits Tribunal (SBT). As part of its disclosure obligations before that tribunal, the municipality has provided the appellant with "a large package of records from the Community and Health Services Department" which it intends to rely on at the tribunal. The appellant continues to seek access to the entire Ontario Works file which is maintained by the municipality, however, including information that is not relevant to the SBT proceeding.

[25] The municipality acknowledges that the appellant provided certain evidence of his financial situation to support his request for a fee waiver. The municipality indicates that, based on the information about his financial situation provided by the appellant, it agreed to reduce the fee by half, to \$94.20 but would not waive the entire fee. It takes the position that the appellant has failed to provide it with "sufficiently compelling

---

<sup>2</sup> Orders M-914, P-474, P-1393, PO-1953-F.

<sup>3</sup> Orders M-914, P-591, P-700, P-1142, P-1365 and P-1393.

evidence that the fees impose a financial hardship.” It argues that a full fee waiver is not fair and equitable in this case.

[26] I have reviewed the evidence tendered by the appellant to the municipality during mediation and that which he provided in response to my request for his representations. I note that the appellant is in receipt of a disability pension under the Canada Pension Plan and his bank statement indicates that he has no savings. Based on the information provided to me, I am satisfied that the payment of the fee requested by the municipality would cause some degree of financial hardship to the appellant. It is clear from a review of the appellant’s evidence that he and his family are living a financially precarious existence and that an expense such as the payment of even this relatively modest fee, would cause financial hardship. I will now address the second part of the test for granting a fee waiver, in order to determine whether it is fair and equitable to do so.

## **Part 2: fair and equitable**

[27] For a fee waiver to be granted under section 45(4), it must be “fair and equitable” in the circumstances. Relevant factors in deciding whether or not a fee waiver is “fair and equitable” may include:

- the manner in which the institution responded to the request;
- whether the institution worked constructively with the requester to narrow and/or clarify the request;
- whether the institution provided any records to the requester free of charge;
- whether the requester worked constructively with the institution to narrow the scope of the request;
- whether the request involves a large number of records;
- whether the requester has advanced a compromise solution which would reduce costs; and
- whether the waiver of the fee would shift an unreasonable burden of the cost from the appellant to the institution.

[Orders M-166, M-408 and PO-1953-F]

[28] In support of its position that it would not be fair and equitable to grant a fee waiver in the circumstances of this appeal, the municipality argues that:

- it has repeatedly offered to work with the appellant to facilitate alternative means of access to reduce costs and to reduce or narrow the scope of the request;
- the evidence upon which it intends to rely in the proceeding before the SBT has been disclosed to the appellant free of charge;
- the appellant refused to attend at its offices to review the records in person;

- the appellant has not offered any compromise solutions; and
- a full waiver of the fee would shift an unreasonable burden onto the municipality, contrary to the user pay provisions in the *Act*.

[29] I note that the responsive records in this appeal total nearly 1000 pages and that the only fee charged by the municipality is its photocopying charges. I am also cognizant of the user pay principles which govern requests for access to information under the *Act* and the fact that the municipality has already reduced the amount of the fee by half, to \$94.20.

[30] The appellant has filed with this office a number of letters in which he sets out the reasons why he requires the requested information. Specifically, he states that he requires the records in order to prepare his case before the SBT. However, the appellant has failed to clearly explain what type of information was not provided to him by the municipality in its earlier disclosure of documents prior to the original date of the SBT hearing and how the information provided to him was in any way deficient or incomplete, so that I can make a determination on this question.

[31] Based on my review of the many communications received by this office it is apparent that the appellant is frustrated with and suspicious of the Ontario Works and Ontario Disability Support Program, and the municipality's role in the denial of benefits to him. He has been unable to achieve the outcome he seeks with these bodies and sees the upcoming SBT appeal hearing to be extremely important to his future. As a result, obtaining the records without charge has taken on enormous significance to the appellant. I further find that the appellant's own limitations make it impossible for him to accede to the municipality's suggestions regarding a compromise solution to the impasse around the disclosure of records to him.

[32] As a result, I find that in the very unique circumstances of this appeal, it is fair and equitable that the fee waiver be granted in this case. The appellant is seeking access to the records contained in his own case file in order to prepare for his upcoming SBT hearing. That tribunal will determine the relevancy of the documents tendered by both the appellant and the municipality at the hearing. If he is granted full access to all of the records in his file at no charge to him, the appellant will be in a position to present his case as completely as he wishes, within whatever limitations the SBT places on his arguments and evidence. In my view, this is an important consideration which weighs significantly in favour of granting a fee waiver in this case.

[33] The municipality has offered certain compromises and accommodations to the appellant to allow him to obtain access to the records he is seeking at a discounted amount meant to recover only a portion of its photocopying expenses. I recognize that the municipality's efforts are commendable and are in keeping with the access principles inherent in the *Act*, as well as the user pay principles enshrined in the *Act's* fee provisions. However, in order to ensure that the appellant is able to present his



best case before the SBT, I conclude that it is fair and equitable to require that the municipality provide the appellant with all of the records in his case file without charge.

**ORDER:**

1. I uphold the municipality's fee estimate of \$94.20.
2. I do not uphold the municipality's decision to deny the appellant a fee waiver.
3. I order the municipality to provide the appellant with a complete copy of his case file without the payment of a fee, using the date of this order as the date of the request.

Original signed by: \_\_\_\_\_  
Donald Hale  
Adjudicator

\_\_\_\_\_ October 7, 2013