Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-3121

Appeal MA14-144

The Corporation of the City of Cambridge

November 13, 2014

Summary: The city received a request for access to a list of the properties that received vacancy rebates from 2008-2013, including the address, zoning, current tax and rebate received. In response, the city issued a fee estimate for producing the record from its machine readable records and for preparing the record for disclosure. The fee estimate was appealed. In this decision, the city's fee estimate is partially upheld.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 45(1), 45(4), Regulation 823, section 6.

Orders Considered: Orders MO-1083 and MO-2377-F.

OVERVIEW:

[1] The Corporation of the City of Cambridge (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for a list of the properties that received vacancy rebates from 2008-2013, including the address, zoning, current tax applied and rebate received.

[2] In its initial response, the city issued a decision stating that it was "not in possession of lists and documents/records outlining the information" that was requested, and that it did not maintain such lists pertaining to vacancy rebates. It also stated that "any third party information pertaining to taxes, etc." should be obtained

from the Municipal Property Assessment Corporation (MPAC), and provided the appellant with contact information for MPAC.

[3] The appellant appealed the city's decision.

[4] During the processing of this file, the city issued a revised decision indicating that it was in possession of the requested information, but that an estimated fee of $780, plus photocopying costs, was required to process the request. The portion of the decision which related to the fees read:

> It will require six (6) hours of Technology Services staff time at a cost of $60 per hour; 12 hours of staff time to go through the information and documentation at a cost of $30 per hour and [the Freedom of Information Coordinator's] time to go through and sever the information at $30 per hour and 2 hours required. This comes to a total of $780.00. In addition there will be a charge of $0.20 per page of any copies forwarded to you.

[5] The decision also asked the appellant for a deposit of 50% of the fee, and stated:

> There are approximately 100 properties in question per year and approximately 500 properties in question for the five years you are requesting.

[6] The decision also asked the appellant to clarify that her request was only for those properties for which the city actually paid a rebate. In addition, the city stated that it anticipated that some information would not be disclosed as it was exempt from disclosure under section 14(1) (personal privacy) of the *Act*.

[7] During mediation, the appellant confirmed that she was appealing the fee estimate decision. Also during mediation, city provided additional information relating to the calculation of its fee, and confirmed that removing residential addresses from the scope of the appellant's request would not change the fee, because residential properties do not qualify for vacancy rebates.

[8] Mediation did not resolve this appeal, and it was transferred to the inquiry stage of the appeal process. I sent a Notice of Inquiry identifying the facts and issues in this appeal to the city, initially. In response, the city advised that it was relying on the information which it had provided in a letter to this office earlier in the appeal process, which included the details of the work required by staff to extract the information and fulfil the request. I will refer to this letter as the city's representations in this appeal.

[9] I then sent the Notice of Inquiry, along with the relevant parts of the city's representations, to the appellant. The appellant provided representations in response.

[10] In this order, I uphold the city's fee estimate for producing the record, and partially uphold the fee estimate for preparing the record for disclosure.

DISCUSSION:

[11] The sole issue in this appeal is whether the city's fee estimate should be upheld.

[12] Previous orders have established that, where the fee is $100.00 or more, the fee estimate may be based on either:

- 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.[1]

[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. The fee estimate also assists requesters to decide whether to narrow the scope of a request in order to reduce the fees. In all cases, the institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated.[2]

[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.

[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

[1] Order MO-1699.
[2] Orders P-81 and MO-1614.

> (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. Section 6 reads:

> 6. The following are the fees that shall be charged for the purposes of subsection 45(1) of the *Act* for access to a record:
>
> 1. For photocopies and computer printouts, 20 cents per page.
>
> 2. For records provided on CD-ROMs, $10 for each CD-ROM.
>
> 3. For manually searching a record, $7.50 for each 15 minutes spent by any person.
>
> 4. For preparing a record for disclosure, including severing a part of the record, $7.50 for each 15 minutes spent by any person.
>
> 5. For developing a computer program or other method of producing a record from machine readable record, $15 for each 15 minutes spent by any person.
>
> 6. The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the record if those costs are specified in an invoice that the institution has received.

[17] In reviewing the city's fee estimate, I must consider whether its fee is reasonable, giving consideration to the content of the appellant's request and the provisions set out in section 45(1) of the *Act* and Regulation 823. The burden of establishing the reasonableness of the fee estimate rests with the city. To discharge this burden, the city must provide me with detailed information as to how the fee estimate was calculated in accordance with the provisions of the *Act*, and produce sufficient evidence to support its claim.

[18] The city provided representations in support of its fee estimate.

[19] The appellant's representations do not address the manner in which the actual fee was calculated; rather, she provides a number of general arguments in support of

her position that the fee should be less than estimated. I will address those arguments below, after my review of the city's evidence in support of its fee estimate.

[20] The city has divided its fee estimate between the fees that can be charged at $60 per hour (to produce a record from a machine readable record), and the fees which can be charged at $30 per hour. I will review the fee estimates for each of these amounts in turn.

Producing a record from a machine readable record

[21] Section 45(1)(c) establishes that fees can be charged for "computer and other costs incurred in locating, retrieving, processing and copying a record." Paragraph 5 of section 6 of Regulation 823 allows the following fee to be charged under the *Act* for access to a record:

> 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.

[22] As noted above, the city has stated that it will require six hours of Technology Services staff time (at $60 per hour) to produce the record from a machine readable record. The city provides representations in support of its position that it will take six hours to produce the record, and that this includes the costs "to develop the query, edit it and verify that it is functioning." It reviews the nature of the work required to be done by Information Technology Services (IT) staff, and states that this will include "the linking of several tables within the tax application and then to link to the GIS database to obtain Zoning information." It then reviews the queries required to obtain the rebate information for each property for each year, and the subsequent work required to determine if a rebate was processed. The city then reviews the other tables that would need to be accessed or added to link the information and to locate the current taxes applied. It also confirms that the query would need to be executed by year, because the request is for a number of years.

[23] The city also states that it estimates that there are between 100 to 150 properties that would have received a rebate each year, for a total of 500 to 750 properties for the 5 years requested. However, it also states that the query would need to look at every one of the approximately 40,000 properties (or accounts) within the tax system.

[24] The appellant does not address the specifics of this aspect of the fee.

[25] The representations of the city provide a detailed description of the nature of the work required to be performed by IT staff to develop the query, edit it and verify that it is functioning, in order to produce the record. It also describes in some detail the types

of information contained in the database. Based on its representations, I am satisfied that the city has provided me with sufficient evidence to support its claim that it will take 6 hours of time to produce the record from machine readable records, and I uphold this part of its fee estimate.

Preparation time

[26] Sections 45(1)(a) and (b) establish that fees can be charged for manually searching for a record and for preparing a record for disclosure. Paragraphs 3 and 4 of section 6 of Regulation 823 allow the following fee to be charged under the *Act* for these tasks:

> 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.

[27] With respect to the portions of the fee estimate that the city charges at $30 per hour, as noted above, the city states that that this includes "12 hours of staff time to go through the information and documentation" and "2 hours of the coordinator's time to sever the information." In its representations, the city supports these fees as follows:

> Tax staff would need to verify the data produced by the query and provide direction to IT as to what tables the data resides on. It would require tax staff to verify; property address, zoning, current taxes by year, amount of rebate received, and total owing for each year by property.
>
> It is anticipated that the information requested will contain some form of personal information, if only the name and personal address of other parties. … it will be necessary for city staff to review each document prior to release to ensure that third party privacy rights are upheld.
>
> … any information that is not eligible for release, including personal information, will be severed from whatever documents [are released].

[28] The appellant does not address the specifics of these fees.

[29] None of the tasks referred to by the city relate to manually searching for a record.

[30] The city's representations in support of the 12 hours required by tax staff refer to the direction staff would provide, and the verification of the information in records. In the absence of further evidence from the city, I am not satisfied that these tasks can be

considered "preparing a record for disclosure."

[31] To begin, without further evidence about the nature of the "direction" tax staff would be providing, I am not satisfied that this can be considered "preparing a record for disclosure." Even if it could be considered as such, the city has provided no details about why this task would take this amount of time.

[32] In addition, the city's reference to the time required to "verify the information" seems to refer to the time tax staff would take to proof the data. Previous orders have confirmed that the costs of preparing the record for disclosure under section 45(1)(b) do not include time for "assembling information and proofing data."[3]

[33] In these circumstances, and in the absence of further information about the tasks required for the 12 hours of tax staff time, I do not uphold the city's fee for this component of the fee.

[34] With respect to the two hours of preparation time to sever the records, given the number of responsive records, and based on the city's representations, I accept this aspect of the city's fee estimate (two hours to prepare the record for disclosure).

[35] In summary, I uphold the city's fee estimate of $360 (6 hours @ $60/hr) to produce a record from a machine readable record, and its estimate of $60 (2 hours @ $30/hr) to prepare the record for disclosure. I do not uphold the other fees estimated by the city. Accordingly, the city's fee estimate is reduced to $420.00.

The appellant's representations

[36] As set out above, the appellant provides a number of general arguments in support of her position that the fees should not be what they are. Her representations contain seven points, some of which are connected. Her representations can be categorized into three broad categories, which I will now review.

[37] Firstly, the appellant argues that the city is using an old computer system dating back to the 1990's, and that this should not result in additional costs being transferred to individuals requesting information. She refers to statements made by city staff which confirm the limitations of the current computer system, and questions why the city can charge the public for access to information if the charges result from the city's older computer system. She states that this "is not the public's burden" and that the city "should not be able to download this cost to the public." She states that "it is not the public's responsibility to make sure [the city's] system is up-to-date and can retrieve this information easily."

[3] See Order MO-1083.

[38] A number of previous orders have addressed concerns that an institution's filing systems, computer systems, or storage retrieval methods are inefficient, and that higher fees should not be chargeable for these inefficiencies. These orders confirm that institutions under the *Act* are generally not required to modify existing information storage facilities or data retrieval systems in order to accommodate the needs of requesters.[4] Following these orders, I find that this is not a reason to reduce the fees chargeable by the city in the circumstances of this appeal.

[39] Secondly, the appellant argues that the city ought to be able to access the information more readily. She states that the city is accountable for public funds, and ought to be able to keep track of the rebate information requested. She states that the city's finance department is responsible for monitoring "commercial property assessed values and taxation rates minus taxation rebates or exemption from property taxation," and that this information should be "up-to-date" for budgetary purposes.

[40] The request resulting in this appeal is for a list of information about properties that received tax rebates, as well as particular information about those properties. The city has stated that it does not maintain lists pertaining to vacancy rebates, but confirms that it can produce the requested record from its record-holdings for the identified fee. The issue before me is not whether the city ought to maintain information in particular lists or formats, rather, it is whether the fee estimate is reasonable. I reject the appellant's positon that the fee estimate is not reasonable because, in her view, the city ought to maintain the data in a particular format.

[41] Lastly, the appellant argues that the city has access to MPAC's computer system known as "Municipal Connect" and, therefore, it ought to be able to access the requested information at less cost. She states that the city works with MPAC and that:

> … The city uses the Municipal Connect on a regular basis for confirming ownership, checking supplementary data and preparing assessment-based reports. Therefore [the city] should be able to put together a list of Commercial and Industrial land and rebates quickly since they are a member of Municipal Connect.

[42] In attachments to her representations, the appellant includes excerpts from the Municipal Connect User Guide in support of her position that the city uses Municipal Connect and can access the data on it.

[43] I note that, in its initial response to the appellant, the city specifically referred the appellant to MPAC and stated "any third party information pertaining to taxes, etc." should be obtained from MPAC. The city also provided the appellant with contact information for MPAC. The appellant's argument appears to be that, because of the

[4] See, for example, Orders M-166, M-546, M-549, M-555 and PO-3027.

city's use of and access to the information on MPAC's database, the city ought to provide her with the requested information at a lower cost.

[44] I do not accept the appellant's argument. To begin, I note that the portions of the Municipal Connect User Guide provided by the appellant include specific references to the restrictions placed on municipalities that are licensed to use Municipal Connect. These restrictions include a municipality's "right to use the assessment information only for the purpose of meeting [its] planning requirements and shall not be used for any other purpose." The guide also establishes that a municipality "may not provide this information to anyone at any charge, including free of charge," and identifies the penalties which would result from misuse of the data. I also note that in Order MO-2377-F, I confirmed MPAC's ability to charge for certain data, and that this information was not accessible through an access request to a municipality under the *Act*. In the circumstances of this appeal, I do not accept the appellant's argument that the city ought to be able to provide her with the requested information by using the Municipal Connect database.

[45] In summary, I reject the appellant's arguments that the fee estimate in this appeal is not reasonable.

ORDER:

I uphold the city's fee estimate of $360 for producing a record from machine readable records, and reduce the estimate for preparing a record for disclosure to $60, for a total of $420.00.

Original Signed By: November 13, 2014
Frank DeVries
Adjudicator