

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-3115

Appeal MA13-367

The Township of Admaston/Bromley

October 23, 2014

**Summary:** The sole issue in this appeal is whether the fee estimate charged by the township for access to engineer's reports for a number of municipal drains is in accordance with the fee provisions of the *Act*. In this order, the township's fee is upheld, in part.

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

### OVERVIEW:

[1] The Township of Admaston/Bromley (the township) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

Engineer's reports creating municipal drains on Crozier Creek, Harris Creek, Mink Creek and Snake River.

[2] In response to the request, the township issued an interim decision, advising the requester that access cannot be provided to the engineer reports for Crozier Creek as there are no municipal drains at that location. With regard to the records relating to the other three locations, the township issued a fee estimate of \$400, advising the

requester that a deposit of \$200 was required before it would process the request. The township included the following fee breakdown in its decision:

Photocopies (approx. 100 pages x \$0.20/page)	\$20.00
Search time (approx. 10 hours x \$7.50/person/15 minutes)	\$300.00
Postage (notice to property owners and public agencies)	<u>\$80.00</u>
<b>Total</b>	<b>\$400.00</b>

[3] The requester, now the appellant, appealed the township's fee estimate, claiming that the fee is excessive and that the engineers' reports should be made available to the public.

[4] During mediation, the appellant revised his request in an effort to reduce the fee estimate. His narrowed request reads as follows:

... engineers' reports for five Municipal Drains: Snake River Municipal Drain, Main Branch South Fork Tributary (Mink Creek), Agnew Angus Municipal Drain, O'Gorman Agnew Municipal Drain and Upper Harris Creek Municipal Drain.

[5] Upon review of the appellant's revised request, the township advised him that this request appeared to be broader than the initial request and would likely result in an increase in the fee estimate. The parties then participated in a teleconference with the mediator to discuss the scope of the appellant's request and the nature of the records. The township provided the appellant with the names of six municipal drains and the dates of their corresponding reports, along with copies of the related drain by-laws.

[6] After reviewing the materials provided by the township, the appellant revised his request to include only the engineer's reports for the following drains:

1. Mink Creek Municipal Drain, dated April 10, 1969
2. Snake River & Upper Harris Creek Municipal Drain, by [named company], dated August 27, 1982
3. South Fork of the Snake River Municipal Drain, by [named company], dated March 8, 1983
4. Repair & Improvement to the Main Drain and Branch No. Two of the Mink Creek Municipal Drain, by [named company], dated March 8, 1983

5. Also, by-law 676 (enacted February 10, 1964) refers to drainage of the Upper Osceola Marsh, based on a report to be done by the firm of [name of firm].... If a copy of the [named firm's] report is available I would like to view it as well

[7] In response to this request, the township issued a final fee estimate of \$980 and advised the appellant that a deposit of \$490 was required before it would process the request. The township included the following fee breakdown in its decision:

Photocopies (approx. 200 pages x \$0.20/page)	\$40.00
Search time (approx. 30 hours x \$7.50/person/15 mins)	\$900.00
Shipping costs (approx. courier or mailing costs)	<u>\$40.00</u>
<b>Total</b>	<b>\$980.00</b>

[8] The appellant advised the mediator that he objects to the township's revised fee estimate.

[9] As mediation did not resolve all of the issues in this appeal, it was transferred to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry under the *Act*. I began my inquiry by inviting the township to make representations in response to the issues raised in a Notice of Inquiry. The township submitted representations in response to the Notice. I then invited the appellant to make representations. The township's arguments were shared with the appellant in accordance with section 7 of this office's *Code of Procedure and Practice Direction 7*, along with a Notice of Inquiry. The appellant also submitted representations.

[10] In his representations, the appellant makes submissions on the applicability of section 10(1) (third party commercial information) and section 16 (public interest override) to the records responsive to his request. The only issue before me in this appeal is whether the township's fee estimate should be upheld. As a result, I will not be considering the appellant's submissions on the application of exemptions and the public interest override to records responsive to his request in this order.

[11] Further, the township advises that it may require a time extension to notify third parties, review replies and prepare disclosure of the records and asks that I decide on whether a time extension should be granted. As stated above, the only issue before me is whether the township's fee estimate should be upheld. Accordingly, I will not be making a determination on whether the requested time extension should be granted. I refer the township to section 20 of the *Act* for guidance with regard to the procedure to be followed with respect to extensions of time.

[12] In the discussion that follows, I uphold the township's fee, in part.

## **DISCUSSION:**

### **Should the fee estimate be upheld?**

[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 to the responsive records.<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.<sup>2</sup>

[14] 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.<sup>3</sup>

[15] In all cases, the institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated.<sup>4</sup>

[16] 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.

[17] 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.

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

<sup>2</sup> Order MO-1520-I.

<sup>3</sup> Order MO-1699.

<sup>4</sup> Orders P-81 and MO-1614.

[18] More specific provisions regarding fees are found in sections 6, 7 and 9 of Regulation 823. Those sections read:

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.

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 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.

(2) A head shall refund any amount paid under subsection (1) that is subsequently waived.

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***

[19] In its representations, the township submits that its fee estimate is based on section 45(1) of the *Act*. The township states that it charged \$0.20/page for photocopies, which is the rate allowed in the *Act*. As well, it states its estimated search fee was based on the rate of \$7.50 for each 15 minutes spent by any person, as is permitted in the *Act*. The township also submits that the shipping costs are based on the actual cost to ship the records to the appellant.

[20] In addition, the township submits that the fee estimate is based on a review of a representative sample of records and that most engineer reports for municipal drains contain at least 40 pages. The township submits that its fee estimate is also based on the advice of the municipal drain coordinator at Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA), the township's previous Clerk-Treasurer and its own Drainage Superintendent, who are familiar with the types and contents of these reports.

[21] The township advises that the records requested are kept in the basement of the municipality, some filed with records of the former Bromley Township and the remainder filed with the former Admaston Township's records. The two former townships of Admaston and Bromley amalgamated in 2000. The township submits that the activity necessary to locate the requested records include soliciting advice and assistance from the previous Clerk-Treasurer and the Drainage Superintendent who are familiar with these records.

[22] The township also notes that part of the search time for the by-laws sent to the appellant during mediation required it to solicit advice from the Drainage Superintendent and the previous Clerk-Treasurer, who searched through manual files from the two townships, now amalgamated, over a time period of 20 years from 1965 to 1985. The township states that this search took two individuals 10 hours. The township also noted that the by-laws are public records and there was no need to sever any of the information from the records.

[23] The township submits that the records sought by the appellant contain third party information and will need to be severed. The township submits that the records are each approximately 40 pages long and the *Act* permits an institution to take 2 minutes/page for severances with an estimated 4 page per report containing third party information, which may amount to 10 hours for preparation time of the documents sought.

[24] In its representations, the township includes a breakdown of the costs required for the search. With regard to notice, the township stated that notifying third parties would cost an estimated \$500. The township estimates that it would take 8 hours for it to prepare and send notification letters to third parties. Additionally, the township estimates that collecting, reviewing and responding to third party replies will take

8 hours. The township states that its actions and estimated costs in relation to notification were not included in its estimate. With regard to search, the township estimates that it will take three individuals 10 hours to conduct the search, at a cost of \$900. The township submits that it will be required to consult the Drainage Superintendent and previous Clerk-Treasurer to manually assist in the search for these records and to ensure they are complete and up to date. Additionally, the township estimates that it will take 10 hours to sever the records due to third party information. These preparation and severing estimates are not part of the township's original fee estimate. The township has estimated a photocopy fee of \$40, based on an estimate that each record will be approximately 40 pages, with a total of 200 pages. Finally, the township has included a charge of \$40 for shipping costs for these records, based on the costs to mail or courier documents sent to the appellant during mediation.

[25] In response to the township's representations, the appellant submits that the township's fee estimate is excessive. The appellant submits that, during mediation, the township provided him with a list of six engineers' reports for municipal drains in the Mink Creek and Snake River watershed, and copies of related by-laws. The appellant states that he then revised his request, asking for four of the engineers' reports identified in the township's list, as well as an additional report that was mentioned in one of the by-laws. Given the fact that the scope of his request was narrowed to five specific documents, the appellant submits that the \$980 estimate cannot be supported. Further, the appellant submits that these documents were widely distributed to the public as part of a legal process under the *Drainage Act*. The appellant submits that the reports were adopted with the by-laws creating the municipal drains and remain living legal documents that guide the actions of the Drainage Superintendent.

[26] Additionally, the appellant notes that he has obtained a copy of the fourth report in his final request, the engineer's report for the Repair and Improvement to the Main Drain and Branch No. Two of the Mink Creek Municipal Drain dated March 8, 1983. The appellant confirmed in his representations that he no longer seeks access to this report from the township.

### ***Analysis and Findings***

[27] On my review of the evidence and the arguments of the parties regarding the fee estimate, I am prepared to uphold the township's fee estimate, in part.

[28] With respect to search time under section 45(1)(a), I agree with the appellant that the township's search time is excessive. In his representations, the appellant seeks access to four engineer reports, three of which are clearly identified. Although the township's fee estimate is based on a search for five reports, I find that it has not provided me with sufficient evidence to justify the estimated search time for three individuals to conduct the necessary searches.

[29] In its explanation for the search time, the township states that it will be required to contact the Drainage Superintendent and previous Clerk-Treasurer to manually assist in the search for the records and ensure the reports are complete and up to date. The township also submits that the actions necessary to locate the requested records include soliciting advice and assistance from the previous Clerk-Treasurer and the Drainage Superintendent who are familiar with these records. However, as the Drainage Superintendent and the previous Clerk-Treasurer assisted the township in searching through the manual files for the by-laws relevant to the appellant's request, I find that it is not reasonable that the Drainage Superintendent and previous Clerk-Treasurer would both be required to assist in a second ten hour search for four clearly identified records that are related to, and likely stored with, the by-laws that were previously searched.

[30] While I appreciate that the records are not of recent origin, are stored in paper format and may not be stored in one set of files due to the township's amalgamation, I find that the township has not provided me with sufficient evidence to demonstrate that an additional 30 hours (or proportionally reduced 24 hours for four records) will be required to search for the requested records. The township has not provided me with evidence with regard to the volume of records that will need to be searched or the manner in which the records are stored or organized. Based on my review of all the evidence before me, I find that a search time of eight hours, or two hours of search time for each record, to be reasonable. If the actual search takes less than the eight hours allowed in this order, the township should reduce the fee balance as appropriate.

[31] With regard to the issue of notice, I note that the township submits that the cost of sending notice to third parties is estimated to be \$500. The township states that it has not included the costs in the fee estimate. The township is not permitted to charge the appellant for the amount of time taken to identify and preparing the records requiring third party notice<sup>5</sup> or for the costs of correspondence to notify these third parties or discharging other general responsibilities under the *Act*<sup>6</sup> and I have not included this charge in the fee estimate.

[32] Although the township did not include preparation or severing of the records in its fee estimate, it has indicated that severing third party information in the records will take about ten hours for twenty pages of severing. The township submits that, at two minutes per page, with an estimated four pages of each report containing third party information, this may result in an additional ten hours to the document preparation time. Reviewing the township's estimate, I find that it is unreasonable to claim an additional ten hours to sever twenty pages of records. Generally, this office has accepted that it takes two minutes to sever a page that requires multiple severances.<sup>7</sup> Using this formula, I find that it should take the township approximately 32 minutes to

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<sup>5</sup> Order MO-1380.

<sup>6</sup> Order MO-2274.

<sup>7</sup> Orders MO-1169, PO-1721, PO-1834 and PO-1990.



sever the estimated four pages of the four requested reports. The township did not provide any further explanation with regard to the ten hours it has estimated for preparation time. Upon review of its representations, I find that the estimated ten hours of record preparation time to be unreasonable and excessive. Further, as the township did not include a fee for preparation time in its final fee estimate sent to the appellant, I will not allow the township to charge such a fee now.

[33] As the appellant has advised that he continues to seek access to four of the five requested records, I will reduce the township's estimate for photocopying. I accept the township's estimate that each report will consist of approximately 40 pages. Based on the rate in Regulation 823, I will uphold an estimate of \$32 to photocopy 160 pages of records. Should the number of pages be different from the estimate, the township should adjust the fee balance accordingly.

[34] Finally, I uphold the township's estimate for shipping costs of \$40, which is based on the actual cost for shipping documents to the appellant during mediation. Again, should the shipping costs be different from the estimate, the township should adjust the fee balance accordingly.

[35] In summary, I uphold eight hours of search time at a cost of \$240, \$32 for photocopies and \$40 for shipping costs for a total of \$312.

**ORDER:**

1. I reduce the search time claimed by the township to eight hours, for a total fee of \$240.
2. I uphold \$32 for photocopying costs.
3. I uphold \$40 for shipping costs.

Original signed by: \_\_\_\_\_  
Justine Wai  
Adjudicator

\_\_\_\_\_ October 23, 2014