

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3240

Appeal MA14-214

Toronto Hydro Electric System Limited

September 15, 2015

Summary: The appellant made a request to Toronto Hydro for the expense receipts of its board of directors and management team for a specified period and requested a fee waiver on the grounds set out in section 45(4)(c) (benefit public health or safety). Toronto Hydro denied the fee waiver request as it noted that the appellant worked at a “for profit” newspaper and that it already makes expense information available to the public at no cost. The adjudicator upholds Toronto Hydro’s decision on the basis that dissemination of the expense receipts would not benefit public safety and dismisses the appeal.

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

OVERVIEW:

[1] The appellant made a request to the Toronto Hydro Electric System Limited (Toronto Hydro) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

...a copy of **all receipts** related to expenses incurred by Toronto Hydro’s management team and all members of Toronto Hydro’s board of directors.

The timeframe for my request is Jan. 1, 2011 to Dec. 31, 2013.

[Emphasis in original]

[2] In his letter, the appellant asked that the fee associated with his request be waived as the request was made in the public interest.

[3] Toronto Hydro issued an interim decision and fee estimate to the appellant, advising him that it was denying his fee waiver request. With regard to the fee, Toronto Hydro advised the appellant as follows:

Based on our review of a representative sample of the records, we estimate there will be approximately 3095 pages of records that may be responsive to your request and that the total fees to process your request will be \$1771.90. The final figure may change based on time spent preparing the records and the volume of records. This fee estimate is based on the following estimates of processing time and fees:

- \$1152.90 (38.5 hours of processing of records responsive to the request @ \$30.00/hr)
- \$619.00 for photocopies at \$.20/page
- **Total Fee Estimate: \$1771.90**

[4] Toronto Hydro advised the appellant that a deposit of \$885.95 was required before it would process the request.

[5] In addition, Toronto Hydro advised the appellant that it is likely that partial access will be granted to the records as the exemptions in sections 10(1) (third party information), 11(e), (f) and (g) (economic interests of the institution), 14(1) (unjustified invasion of personal privacy) and 15 (information soon to be published) or the exclusion in section 52(3) (labour relations or employment) of the *Act* may apply to exempt all or portions of the records.

[6] During the inquiry into this appeal, the adjudicator sought and received representations from Toronto Hydro and the appellant. In his representations, the appellant advised that he no longer appealed the amount of Toronto Hydro's fee estimate. Accordingly, this aspect of the appeal is no longer at issue. The file was then assigned to me to dispose of the remaining issue in the appeal.

[7] In this order, I uphold Toronto Hydro's decision to deny the fee waiver.

DISCUSSION:

[8] The sole issue to be determined is whether the appellant should be granted a fee waiver under section 45(5)(c). This provision states:

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,

whether dissemination of the record will benefit public health or safety; and

[9] 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.¹

[10] 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.²

[11] The appellant submits that the fee should be waived on the basis of section 45(4)(c) as dissemination of the receipt details of Toronto Hydro's management and board would benefit public safety.

[12] The following factors may be relevant in determining whether dissemination of a record will benefit public health or safety under section 45(4)(c):

- whether the subject matter of the record is a matter of public rather than private interest
- whether the subject matter of the record relates directly to a public health or safety issue
- whether the dissemination of the record would yield a public benefit by
 - (a) disclosing a public health or safety concern, or
 - (b) contributing meaningfully to the development of understanding of an important public health or safety issue

¹ Order PO-2726.

² Orders M-914, P-474, P-1393 and PO-1953-F.

- the probability that the requester will disseminate the contents of the record³

[13] The focus of section 45(4)(c) is “public health or safety”. It is not sufficient that there be only a “public interest” in the records or that the public has a “right to know”. There must be some connection between the public interest and a public health and safety issue.⁴

[14] The appellant addressed each of the following factors listed above, which I set out below.

[15] *Whether the subject matter of the record is a matter of public rather than private interest?*

The appellant submits that the receipt details of expenses incurred by Toronto Hydro’s management and board are matters of public interest. He states:

More than 700,000 customers in Toronto rely on the safe delivery of electricity, and therefore have a right to know details about what those running Toronto Hydro are doing to ensure the corporation is meeting its responsibilities...Managers and board members of Toronto Hydro are entrusted by the public to act in the public’s best interest. In order for the public to ascertain whether executives of the corporation are fulfilling their responsibilities, the public must have full access to all expense receipt details.

[16] *Whether the subject matter of the record relates directly to a public health or safety issue?*

The appellant submits that the subject matter of the records directly relates to a public safety issue. He states:

The reliable and safe distribution of electricity across the City of Toronto is the role of Toronto Hydro. The actions taken by Toronto Hydro’s management and board members in the execution of their duties are therefore directly related to the corporation’s role. As such, the actions of Toronto Hydro’s executives, including where they conduct company business, what they do in the name of the company, what food and drink items they charge to the company and where they travel on company business should be subject to public scrutiny...The public, which pays for electricity, is entitled to know this information in order to determine if and

³ Orders P-2, P-474, PO-1953-F and PO-1962.

⁴ Orders MO-1336, MO-2071, PO-2592 and PO-2726.

how Toronto Hydro management is acting in the best interest of the safe and reliable distribution of electricity.

[17] *Whether the dissemination of the record would yield a public benefit by contributing meaningfully to the development of understanding of an important public health or safety issue?*

The appellant submits that the records at issue will improve the transparency of Toronto Hydro and states:

In December 2013, an ice storm hit Toronto, coating wires, utility poles, trees, vehicles and roads in a thick sheet of ice. Trees and utility poles collapsed under the weight of the ice and left about 300,000 customers without power. It took more than a week to restore power to all affected Toronto Hydro customers...The actions of Toronto Hydro's executives during this time period were, and continue to be, of great interest to customers of the corporation. The public is entitled to learn the steps Toronto Hydro is taking to avoid future power outages and what steps were taken in the past that may have led to the power outage of December 2013. The actions taken by Toronto Hydro executives therefore have a direct impact on the safety of the public...Dissemination of this information will therefore undoubtedly contribute to the development of understanding of an important public safety issue.

[18] *The probability that the requester will disseminate the contents of the record?*

The appellant submits that he is a reporter for the Toronto Star, Canada's largest daily newspaper. If published, information about the receipt details would be shared with a wide audience.

[19] Responding to the fee waiver request, Toronto Hydro submits that the appellant has not established that section 45(4)(c) applies as there is no connection or relationship between the public safety matters described in the appellant's representations and the expense receipts that are the subject of his request. Toronto Hydro cites past decisions of this office⁵ and states:

The IPC has recognized that requests for expense receipts do not require a fee waiver on grounds of public health, and in particular, that arguments favouring disclosure of receipts on grounds that there is a public interest in ensuring that money is being spent properly by hospitals to protect public health and safety, however valid a concern, do not contribute meaningfully to the development of or understanding of a public health issue or otherwise concern a public health or safety matter. Similarly in

⁵ Orders PO-3206, PO-3215.

this case, the request for disclosure of Toronto Hydro Board of Directors and management team expenses does not concern a public safety matter and is unlikely to contribute meaningfully to the development or understanding of a public safety issue, notwithstanding that Toronto Hydro's operations may involve matters of public safety.

[20] Toronto Hydro specifically addresses the appellant's argument linking the expense receipts with transparency in Toronto Hydro's handling of the ice storm and argues that there is no connection. Toronto Hydro notes that the ice storm occurred at the end of December 2013 yet the appellant's request for information covers the period of 2011 – 2013.

[21] Lastly, Toronto Hydro submits that a public interest in the expense receipts does not constitute a grounds for fee waiver under section 45(4) and states that:

...Toronto Hydro posts the expenses of the members of its Board of Directors and senior management team on its website. It is submitted that this information meets the public interest in disclosure of the expenses of Toronto Hydro Board of Directors and management...Even if there is a public interest in the disclosure of the receipts over and above the Toronto Hydro website disclosure of expenses, which we submit there is not, this is not sufficient to ground a fee waiver. The information must relate to public safety in a direct way, and the expense details that are the subject of the request in this case do not do so.

[22] Based on my review of the parties' representations and the specific wording of the appellant's request, I find that the appellant has not established the grounds for fee waiver in section 45(4)(c). While I accept that there is a public interest in the expense receipts for Toronto Hydro's board of directors and management, I am unable to find that the expense receipts relate directly to a public health or safety issue or that dissemination of this information will contribute meaningfully to the development of understanding about a public safety issue.

[23] Furthermore, it is not evident to me that disclosure of the expense receipts will improve Toronto Hydro's transparency with respect to the manner in which it handled the December 2013 ice storm. I note that Toronto Hydro posts the expenses of its board of directors and senior management team online. In particular, Toronto Hydro's public expense posting includes the date, amount reimbursed, category of expense and event detail for each member of the board of directors and management team. The expense information posted by Toronto Hydro is the same type of information posted by the City of Toronto with respect to the expenses of its senior management. I find that Toronto Hydro's public expenses posting contributes to its financial transparency and adequately addresses any public interest in this type of information.

[24] Accordingly, I uphold Toronto Hydro's decision to deny the fee waiver and

dismiss the appeal.

ORDER:

I uphold the institution's decision to deny the fee waiver and dismiss the appeal.

Original Signed by: _____
Stephanie Haly
Adjudicator

September 15, 2015 _____