

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3364

Appeal MA15-305

Toronto Police Services Board

October 14, 2016

Summary: The appellant requested the Toronto Police Services Board waive a \$97.20 fee for disclosing records responsive to his request under the *Municipal Freedom of Information and Protection of Privacy Act*, on the basis that the fee would cause the appellant financial hardship for the purpose of section 45(4)(b) of the *Act*. The appellant has not established that the fee will cause financial hardship, therefore the police decision not to waive the fee is upheld.

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

Orders and Investigation Reports Considered: PO-3338, PO-2847, PO-2848, PO-2835.

OVERVIEW:

[1] The Toronto Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act (the Act)* for all records created in a specified time period involving or related to the requester, his father, mother and wife. The requester provided a signed authorization from the three family members authorizing disclosure of their personal information to him.

[2] The police issued the requester a detailed breakdown of its fee estimate of \$97.20 for disclosing the responsive records and advised him that copies of the records would be disclosed following payment. The police also provided the requestor with

information about how to request a fee waiver.

[3] The requester asked that the fee be waived due to financial hardship. At the police's request, the requester submitted some information to the police to support his fee waiver request. The police issued a decision denying the fee waiver. The requester (now the appellant) appealed the police's decision.

[4] During mediation, the police outlined the information they required to reconsider the appellant's fee waiver request. The appellant made further submissions to the police regarding the fee waiver. The police issued another decision indicating that the appellant's request had not met their criteria and confirming their decision not to waive the fee. The appellant does not believe that the police have provided sufficient reasons for denying his fee waiver request.

[5] As no further mediation was possible, the appeal moved to an inquiry. The inquiry began by seeking representations and supporting evidence on the fee waiver issue from the appellant. The police then provided representations on the fee waiver issue, including the appellant's non-confidential representations. The police's representations were shared with the appellant, and the appellant was invited to respond, but did not do so.

[6] This order upholds the police's decision to deny the appellant's fee waiver request.

RECORDS:

[7] In the detailed fee estimate provided to the appellant, the police identified 411 pages of records as responsive to the appellant's request. The police have stated that portions of the responsive records may be withheld under sections 8, 12 and 14 of the *Act*.

DISCUSSION:

[8] The sole issue in this appeal is whether the appellant is entitled to a fee waiver under section 45(4)(b) of the *Act*.

[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. Fees referred to in section 45(1) and outlined in 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] Section 45(4) of the *Act* requires an institution to waive fees, in whole or in part, in certain circumstances:

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.

[11] Section 8 of Regulation 823 sets out additional matters for a head to consider in deciding whether to waive a fee:

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.

[12] A requester must 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 The institution or this office may decide that

¹ Order PO-2726.

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

only a portion of the fee should be waived.³

Basis for fee waiver- *Section 45(4)(b): financial hardship*

[13] The appellant claims that he should be granted a fee waiver on the basis of financial hardship, which is a ground under section 45(4)(b) of the *Act*.

[14] 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.⁴

Analysis

[15] I will begin by considering whether payment of the \$97.20 fee would result in financial hardship to the appellant. I am conscious of not placing too high a burden on the appellant to establish such a claim, for the obvious reason that should an appellant be unable to pay such a fee, they may well face significant practical barriers to gathering and supplying evidence to support their claim. However, I must balance that against the fact that establishing that section 45(4)(b) applies requires sufficiently robust evidence from the requestor to show that a financial hardship would result from paying the fee.

[16] The appellant has had previous appeals that addressed the financial hardship issue. In Order PO-2847, issued in 2009, Adjudicator James found \$1380 in photocopying charges would result in financial hardship to the appellant, given the quantum of the fee and the appellant's evidence regarding his financial circumstances. That evidence included tax returns for the two years prior to his request. In Order PO-3338, issued in 2014, Adjudicator Haly found the appellant had not provided sufficient evidence to establish that payment of a \$50 fee for access to records would cause him financial hardship. In that appeal, the appellant did not provide any evidence of his income, assets or liabilities outside of his statements that his financial circumstances had not changed (from his financial situation in Order PO-2847).

[17] In this appeal, the appellant's representations that he has no financial resources are supported by documentary evidence comprising:

1. a portion of the income tax return information the appellant filed for the 2013 tax year, purporting to show he had no income that year;

³ Order MO-1243.

⁴ Orders M-914, P-591, P-700, P-1142, P-1365 and P-1393.

2. A bank machine-generated receipt from March 2015 showing an account balance near zero. The appellant says the account is now closed so he cannot provide more recent information;
3. undated photos of a house before and after it was burned down, which the appellant says he owned but did not have insured; and
4. an email to the appellant from a third party which the appellant requested remain confidential.

[18] Based on my review of the parties' submissions, I find that the appellant has not established that payment of the \$97.20 fee will cause him financial hardship. The appellant's representations require sufficient evidentiary support. Much of the appellant's documentary evidence is not current. The appellant's documentary evidence is piecemeal and lacks the necessary context to bear much weight in establishing financial hardship. The evidence does not present a contemporary or coherent picture of the appellant's current financial situation. The police provided evidence that the appellant has frequently been, and currently is, engaged in civil litigation, which suggests the appellant has access to some resources, or he would not be able to carry on these endeavours. Overall, I am satisfied that the evidence is insufficient to support a conclusion that a fee of \$97.20 would cause a financial hardship to the appellant, as required by section 45(4)(b).

[19] As I find the appellant has not established the basis for the fee waiver, it is not necessary to proceed to consider whether it would be fair and equitable in the circumstances to grant the waiver.

ORDER:

I uphold the police decision not to grant a fee waiver to the appellant.

Original Signed by: _____
Hamish Flanagan
Adjudicator

_____ October 14, 2016