

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-3439

Appeal MA16-100

Toronto Police Services Board

May 15, 2017

**Summary:** The two issues under appeal are whether the police's \$480 fee estimate is reasonable and whether that fee should be waived. The appellant seeks access to all instances in which his personal information was accessed on various police databases, such as CPIC. The appellant appealed the police's \$480 fee estimate. During mediation, the appellant submitted a request for a fee waiver based on financial hardship under section 45(4)(b) of the *Act* but that request was denied. The adjudicator upholds the police's fee estimate, in part. She allows the police to charge the appellant for the time taken to develop a method for producing the responsive records under section 6.1(3) of Regulation 823. The adjudicator does not allow the police to charge the appellant for search or preparation time because the appellant is seeking access to his personal information. Finally, the adjudicator upholds the police's denial of the appellant's fee waiver request.

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

### OVERVIEW:

[1] The appellant made an access request to the Toronto Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the following:

I would like to know who has looked me up in the police databases. Including, but not limited to, the CPIC, and carding, databases.

[2] The appellant advised the police that the time frame for the request is January 1,

2005 to December 21, 2015.

[3] The police issued an interim decision containing a fee estimate of \$480.00. The police referred to section 6 of Regulation 823 and advised the appellant that the fee reflected 16 hours for search and preparation of records. The police also advised the appellant that his written acceptance of the fee along with a 50% deposit of \$240.00 would be required prior to proceeding with the request. Finally, the police noted that some portions of the responsive records may be withheld from disclosure pursuant to section 8(1) (law enforcement) of the *Act*.

[4] The appellant appealed the police's fee estimate decision.

[5] During mediation, the appellant submitted a fee waiver request to the police. The police issued a decision to the appellant advising him that they were not willing to waive the entire fee at this time. However, in consideration of the appellant's employment status, the police reduced the fee deposit to \$100.00. The police explained that additional consultation with the Information Security Unit confirmed that, based on the search parameters outlined in the request, which included a 10-year time frame and a common surname, a suitable search syntax must be created and the results must then be carefully reviewed and filtered to ensure that only the appellant's personal information is extracted. Finally, the police noted that if the actual processing time was less than the original estimate of 16 hours, the remaining balance would be adjusted accordingly.

[6] The appellant advised the mediator that he believes that the police should not charge him for assessing his personal records.

[7] Mediation did not resolve the issues in the appeal and the appeal was transferred to the appeal process, where an adjudicator conducts an inquiry. The adjudicator originally assigned to this appeal began her inquiry by inviting the police to provide representations in response to a Notice of Inquiry. The police submitted representations. The adjudicator then invited the appellant to submit representations in response to the police's representations, which were shared in accordance with Practice Direction Number 7 from the IPC's *Code of Procedure*. The appellant did not submit representations.

[8] The appeal was then transferred to me. In the decision that follows, I uphold part of the police's fee estimate. I find that it is not entitled to charge the appellant for search and preparation of records because the records will contain his personal information. I allow the police to charge the appellant two hours for developing a method of producing a record from machine readable record under section 6.1 of Regulation 823. Finally, I uphold the police's denial of the appellant's fee waiver request.

## **ISSUES:**

A. Should the fee estimate be upheld?

B. Should the fee be waived?

## **DISCUSSION:**

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

[9] Under section 45(3) of the *Act*, an institution must provide the requester with a fee estimate where the fee exceeds \$25. 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>1</sup>

[10] 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>2</sup> The fee estimate also assists requesters to decide whether to narrow the scope of a request in order to reduce the fees.<sup>3</sup> 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>

[11] The IPC may review an institution's fee and determine whether it complies with the fee provisions in the *Act* and Regulation 823. Section 45(1) requires an institution to charge fees for requests under the *Act*. Section 45(1) 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.

[12] More specific provisions regarding fees are found in section 6, 6.1, 7 and 9 of Regulation 823. Sections 6 and 6.1 of Regulation 823 apply differently, depending on

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<sup>1</sup> Order MO-1699.

<sup>2</sup> Orders P-81, MO-1367, MO-1479, MO-1614 and MO-1699.

<sup>3</sup> Order MO-1520-I.

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

whether the records contain the requester's personal information.

[13] In the appeal before me, the appellant seeks access to information identifying instances in which his personal information was accessed through various police databases. While the responsive records are not before me, I find that they would contain the appellant's personal information. As the police indicate in their representations, the results of its search will "include the appellant's name and date of birth", clearly showing that the responsive records would contain his personal information. Therefore, section 6.1 of Regulation 823 would apply in this case. Section 6.1 of Regulation 823 states

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.
2. For records provided on CD-ROMs, \$10 for each CD-ROM.
3. 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.
4. 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 hat the institution has received.

[14] In reviewing the police's fee estimate, I must consider whether it is reasonable, considering the content of the appellant's request, the circumstances of the appeal 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 police. To discharge this burden, the police must provide me with detailed information as to how the fee was calculated in accordance with the provisions of the *Act* and produce sufficient evidence to support its claim.

[15] The police's original fee estimate charged the appellant \$480.00. The police's fee estimate breakdown read as follows:

Photocopying

Number of pages to be released	0	
Photocopying charges per page	\$0.20	
<b>Total charge for photocopying</b>		<b>\$0</b>

Search time

Total hours searching/consultation for responsive material with subject-matter experts	16	
Search time charge per fifteen minutes	\$7.50	

**Total charge for search/consultation time** **\$480.00**

Production time – preparing for disclosure

Total initial minutes required 0

Production time – charge per fifteen minutes \$15.00

**Total charge for production** **\$0**

**TOTAL FEE ESTIMATE** **\$480.00**

[16] In its representations, the police state they sought assistance from their Information Security and Professional Standards units, specifically an Information Security Officer and a senior security Examiner. The police submit that both individuals have extensive experience in conducting similar searches and in-depth knowledge of the various databases which contain the requester’s information and the databases that should be searched. Further, the police submit that these individuals have the ability to determine the approximate amount of time required to produce the records.

[17] The police submit that the appellant does not seek access to an “existing record”. Rather, the police submit that they will need to create a record according to the appellant’s specifications. The police submit that the information the appellant seeks access to would be found in audit logs contained in various computer systems used by the police.

[18] The police submit that their senior security Examiner will need to “create a search syntax and carefully review and filter the results to ensure that only the requester’s information is extracted.” In light of the technological changes that occurred in the period that is the subject of the request, the police submit that the Examiner must submit multiple searches to extract results from the various systems. The police provided me with a summary of the estimated time required to create the responsive records. The police’s summary reads, in part:

<b>Task</b>	<b>Description</b>	<b>Time required</b>
Manual Search – Preparation	Request intake, reviewing requirements, validating data, identifying scope of various systems to query and identifying search criteria	1 hour
Manual Search Preparation – Other Method of producing a record from machine readable record	This search would involve searching various databases, both internal and external sources as our internal audit retention period is five years. Internal searches would require multiple searches of different databases due to technology changes (i.e. legacy systems and current systems). In addition, each search would need to be further broken down when searching a five year period due to a limitation in the number of returned records that can be	2 hours

	exported, and also to make reviewing all of the results more manageable.	
Preparing the record for disclosure	The majority of time would be spent analyzing/reviewing the results.	10 hours
Preparing the records for disclosure	Compiling a readable response; this would involve collating all of the results from the different databases and merging into one response	3 hours

[19] The police note that section 6(5) of Regulation 823 allows them to charge a fee of \$15.00 for each 15 minutes for developing a computer program or other method of producing a record from a machine readable record. In order to produce the responsive material, the police submit that the security Examiner will create a search query, locate, retrieve and review the records to verify their responsiveness. The police note that they reduced their fee estimate by calculating all of the fees in accordance with section 6(3) of Regulation 823 with a fee of \$7.50 for each 15 minutes spent.

[20] The police state that they will not be charging for photocopies.

[21] The appellant did not submit representations. However, during mediation, the appellant advised the mediator that he should not be charged for accessing his personal records.

[22] Having reviewed the fee and considered the police's representations, I uphold only the police's fee for "developing a computer program or other method of producing a record from a machine readable record" under section 6.1(3) of Regulation 823. The police identified that this task would require 2 hours in its summary, which I reproduced, in part, above. Therefore, the police are permitted to charge the appellant a fee of \$120.00.

[23] Both the appellant and the police appear to agree that the responsive records would include the appellant's personal information. As stated above, I find that the appellant is seeking access to his personal information, namely instances in which he was the subject of a police database search. Further, the police confirm that the results of the search in response to the appellant's request will include his personal information, such as his name and date of birth. Accordingly, section 6.1 of Regulation 823 governs the fees that the police may charge for the appellant's request. Section 6.1 of Regulation 823 does *not* allow an institution to charge a requester fees for manually searching for records containing a requester's personal information or for preparing them for disclosure. Therefore, the police are not entitled to charge the appellant for the time required for "Manual Search – Preparation" or "Preparing the records for disclosure."

[24] However, under section 6.1(3) of Regulation 823, the police are permitted to

charge \$15 for each 15 minutes spent by any person “for developing a computer program or other method of producing a record from machine readable record.” Based on my review of the police’s representations, I accept the police’s submission that they will need to create a record in response to the appellant’s request given the various police databases that will be searched. Further, I accept the police’s submission that their senior security Examiner will create a search syntax to extract the requested information. According to the police’s representations, they allocated 2 hours to developing a method of producing a record from machine readable record. Based on my review of the police’s representations, I accept that 2 hours is a reasonable amount of time required to develop a method of producing the responsive records from machine readable record.

[25] Accordingly, I uphold \$120 of the police’s fee estimate, which reflects the police’s two-hour estimated time for developing a method of producing the responsive records from its various databases.

**Issue B: Should the fee be waived?**

[26] During mediation, the appellant submitted a fee waiver request to the police. In his request, the appellant claimed section 45(4)(b) (financial hardship) as the grounds for his request. The police denied the appellant’s fee waiver request but reduced the \$240 deposit owed to \$100.

[27] 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 as follows:

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.

[28] The fee provisions in the *Act* establish a user-pay principle which is founded on the premise that requesters pay the prescribed fees associated with 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.<sup>5</sup>

[29] 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>6</sup>

[30] The institution or this office may decide that only a portion of the fee should be waived.<sup>7</sup>

[31] For section 45(5)(b) to apply, the appellant must provide some evidence regarding his financial situation, including information about income, expenses, assets and liabilities.<sup>8</sup> The fact that the fee is large does not necessarily mean that payment of the fee will cause financial hardship.<sup>9</sup>

[32] The appellant claims that he should be granted a fee waiver on the basis of financial hardship under section 45(4)(b) of the *Act*. In his fee waiver request, the appellant stated that he is unemployed and cannot afford to pay the fees. However, the appellant did not provide any representations in response to the Notice of Inquiry to provide further details on his financial status.

[33] The police submitted representations but, in these circumstances, it is not necessary for me to rely on them.

[34] On my review of the material before me, I have insufficient evidence that payment of \$120 fee would constitute financial hardship for the appellant as contemplated by section 45(4)(b) of the *Act*. I accept that the appellant is currently unemployed and, therefore, has limited or no income. However, the appellant did not submit any financial documentation in support of his fee waiver request. As a result, it is not clear what the appellant's financial situation is and I am unable to conclude that

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<sup>5</sup> Order PO-2726.

<sup>6</sup> Orders M-914, P-474, P-1393 and PO-1953-F.

<sup>7</sup> Order MO-1243.

<sup>8</sup> Orders M-914, P-591, P-700, P-1142, P-1365 and P-1393.

<sup>9</sup> Order P-1402.



payment of the \$120 fee would constitute financial hardship.

[35] However, that is not the end of the matter. I must also consider whether it would be fair and equitable to grant a fee waiver taking into account any other relevant factors such as

- 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 advanced a compromise solution which would reduce costs
- whether the waiver of the fee would shift an unreasonable burden of the cost from the appellant to the institution.<sup>10</sup>

[36] I note that the appellant did not submit any representations identifying factors that would weigh in favour of granting a fee waiver. While the absence of representations is not determinative, I have reviewed all the circumstances in this appeal and in light of the reduced fee, I find that it would not be fair and equitable to grant the appellant a fee waiver in this case.

[37] In conclusion, I uphold the police's decision to deny the appellant's fee waiver request.

**ORDER:**

I uphold \$120 of the police's fee. I uphold the police's decision to deny the appellant's fee waiver request.

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

\_\_\_\_\_ May 15, 2017

<sup>10</sup> Orders M-166, M-408 and PO-1953-F.