

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3481

Appeal MA16-464

Niagara Peninsula Conservation Authority

August 11, 2017

Summary: The Niagara Peninsula Conservation Authority (the NPCA) received a request under the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* for the underlying transactions regarding certain information in the NPCA's financial statements. The appellant asked for this information to preferably be in a specific format and to include additional information. The appellant appealed the NPCA's fee of \$765.00 for locating and preparing the records for disclosure.

The adjudicator upholds the NPCA's preparation fee of \$525.00 but does not uphold its search fee of \$240.00.

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

BACKGROUND:

[1] The Niagara Peninsula Conservation Authority (the NPCA) received the following request under the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA or the Act)*:

Page 30 of the NPCA financial statements of Dec 31, 2015 "Schedule of Segment Disclosure by Object"

Under 2015 expenses, expense item #3 "Contracted services" totals \$724,885 in 2015, in 2014 this same number was \$384,770.

I am requesting a copy of the underlying transaction listing for both 2015 and 2014 which supports the expense totals above. The report should include:

- vendor name
- date
- amount
- purchase order number
- approver

Preferred medium is Microsoft Excel exported from the financial tracking system.

I am also requesting any reconciling schedules and amounts if the total of the underlying transaction does not agree to the financial statement line-item.

[2] The NPCA issued an interim access and fee estimate decision, assessing fees for the responsive records totaling \$720.00. The ministry provided a breakdown of the search and preparation fees and advised the appellant that while all records have not been reviewed, it was likely that no exemptions will be applied. The NPCA requested a 50% deposit of \$360.00.

[3] The requester proceeded to pay the deposit of \$360.00. The NPCA subsequently issued a final access decision, granting full access to the responsive records. The NPCA noted that the total fee had increased to \$765.00 and requested payment of the remaining balance of \$405.00 before the records could be disclosed.

[4] On receipt of full payment, the NPCA disclosed the responsive records.

[5] The requester (now the appellant) appealed the amount of the fee assessed.

[6] During mediation, the NPCA provided an explanation of their search and preparation fees. The appellant advised the mediator that he believes that the fee assessed by the NPCA was excessive given the amount of records disclosed. No further mediation was possible.

[7] Accordingly, this file was transferred to the adjudication stage, where an adjudicator conducts an inquiry.

[8] Representations were sought and exchanged between the NPCA and the appellant in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*.

[9] In this order, I uphold the NPCA's preparation fee of \$525.00 but do not uphold its search fee of \$240.00.

DISCUSSION:

Should the fee be upheld?

[10] An institution must advise the requester of the applicable fee where the fee is \$25 or less.

[11] Where the fee exceeds \$25, an institution must provide the requester with a fee estimate.¹

[12] 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.²

[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.³

[14] The fee estimate also assists requesters to decide whether to narrow the scope of a request in order to reduce the fees.⁴

[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.⁵

[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:

¹ Section 45(3).

² Order MO-1699.

³ Orders P-81, MO-1367, MO-1479, MO-1614 and MO-1699.

⁴ Order MO-1520-I.

⁵ Orders P-81 and MO-1614.

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.

[18] More specific provisions regarding fees are found in section 6, of Regulation 823. This section 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.

[19] The NPCA charged the appellant \$765.00 for 25.5 hours of search and preparation time at \$30.00 per hour. The breakdown for this fee is, as follows:

- Search Time (paper file retrieval, exporting internal control accounts from accounting software): 8 hours

- Preparation Time (inputting approver, verifying control references, ensuring data matched Audited Statement): 17.5 hours

[20] The NPCA states that 25.5 hours were necessary as the information sought had to be retrieved from multiple internal accounts and each transaction had to be cross-referenced with the Audited Financial Statement and verified for accuracy. In addition, it states that the NPCA staff were required to manually input information that was only available in paper files into a new Excel document listing a total of 348 transaction entries.

[21] In order to produce the new Excel document, NPCA staff were required to carry out the following actions:

(a) 8 hours of searching, including:

(i) paper file retrieval for every transaction entry, as information about the approver of transactions is located only on paper payment requisition forms and is not held within the NPCA's electronic financial accounting system; and

(ii) exporting multiple internal control accounts from accounting software; and

(b) 17.5 hours of preparation, including:

(i) inputting approver information into all entries;

(ii) verifying control references for all entries, as the [appellant] asked that reconciling schedules be provided if the underlying transaction did not add up to the line-item in the NPCA's Audited Financial Statements. The transactional data contained in the NPCA's electronic financial accounting system is not identical to the information in the Audited Financial Statements relied upon by the [appellant] to make his request. The audited statements combine various internal accounts which the auditors deemed to fall within the ambit of "contractor services". As a result, the NPCA's finance manager was required to contact the auditors to find out which accounts and transactions were included in the numbers they have provided to the NPCA in the Audited Financial Statements; and

(iii) ensuring that data in all entries matched the Audited Financial Statements...

[22] The NPCA submits that the total time of 25.5 hours is entirely reasonable to complete work of this nature, considering that on average only 4.39 minutes were spent to create each transaction entry based on data from multiple sources.

[23] The NPCA states that the time claimed for the preparation of records includes activities required to generate reports by persons through non-automated means, as opposed to simply obtaining reports that are readily available in electronic format through computer systems. It states that the information provided in these entries was located by NPCA staff as efficiently as possible, and was not automatically available for use through a computer or other system. It states that:

... verification of control references and cross-referencing data with the Audited Financial Statements could not be done by a computer and required manual preparation by NPCA staff. These verification activities are not simple data compilation or proofreading activities, but rather comprised an essential part of the work required to provide the [appellant] with the precise information that he was looking for when he specifically asked for "any reconciling schedules and amounts if the total of the underlying transaction does not agree to the financial statement line-item" ...

[T]he time claimed for search and preparation does not include any of the categories that have been found not to be included in the chargeable costs under section 45 of *MFIPPA*, such as the cost of identifying and consulting with appropriate staff, coordinating a search for records, proofreading, photocopying, or communicating with the [appellant].

[24] The appellant's representations did not address the issue as to whether the fee was properly charged in accordance with the provisions of the *Act* and Regulation 823, set out above. Instead his position is that he should not be charged a fee and appears to be seeking a fee waiver. However, the appellant was advised in each decision letter of his right to request a fee waiver at that time. He did not do so and this order only concerns the reasonableness of the fee charged by the NPCA.

Analysis/Findings

[25] The NPCA has levied two charges on the appellant, a search fee and a preparation fee. I will consider each of these fees separately.

Search fee

[26] The NPCA has charged 8 hours of search fee for two separate search actions, namely:

- paper file retrieval for every transaction entry from paper payment requisition forms, and
- exporting internal control accounts from accounting software.

[27] The NPCA was asked the following questions in the Notice of Inquiry:

How are the requested records kept and maintained?

What actions are necessary to locate the requested records? What is the estimated or actual amount of time involved in each action?

[28] The NPCA conducted the actual search for the responsive records, however, it did not provide the actual amount of time involved in each of the two actions it undertook.

[29] I find that the NPCA has not provided sufficient detail in its response as to the actual search hours undertaken. It has not indicated what the actual amount of time was involved in each action, the paper record search and the electronic search.

[30] Furthermore, the NPCA did not provide an explanation as to what "exporting internal control accounts from accounting software" entails in relationship to the records requested, and how this electronic search could have taken up to 8 hours of search time.

[31] Accordingly, I am going to disallow the 8 hours of search time as I do not have sufficient evidence to support this claimed time.

Preparation Fee

The NPCA has charged a 17.5-hour preparation fee.

Concerning the preparation fee, section 45(1)(b) includes time for

- severing a record⁶
- a person running reports from a computer system⁷

[32] Generally, this office has accepted that it takes two minutes to sever a page that requires multiple severances.⁸

[33] Section 45(1)(b) does not include time for

- deciding whether or not to claim an exemption⁹
- identifying records requiring severing¹⁰
- identifying and preparing records requiring third party notice¹¹

⁶ Order P-4.

⁷ Order M-1083.

⁸ Orders MO-1169, PO-1721, PO-1834 and PO-1990.

⁹ Orders P-4, M-376 and P-1536.

¹⁰ Order MO-1380.

- removing paper clips, tape and staples and packaging records for shipment¹²
- transporting records to the mailroom or arranging for courier service¹³
- assembling information and proofing data¹⁴
- photocopying¹⁵
- preparing an index of records or a decision letter¹⁶
- re-filing and re-storing records to their original state after they have been reviewed and copied¹⁷
- preparing a record for disclosure that contains the requester's personal information [Regulation 823, section 6.1].

[34] The NPCA was asked in the Notice of Inquiry:

- What actions are required to prepare the records for disclosure?
- What amount of time is involved in each action?

[35] The 17.5 hours of preparation fee was for "inputting approver, verifying control references, ensuring data matched Audited Statement."

[36] The NPCA provided very detailed representations as to the actions necessary to prepare the records for disclosure, including the actions necessary for running reports from a computer system.

[37] The appellant requested that the responsive information be provided in a specific manner and format. Specifically, he asked for:

- The responsive information preferably to be provided in a Microsoft Excel format exported from the financial tracking system, and
- any reconciling schedules be provided if the underlying transaction did not add up to the line-item in the NPCA's Audited Financial Statements.

[38] Based on my review of the NPCA's detailed representations as to its preparation

¹¹ Order MO-1380.

¹² Order PO-2574.

¹³ Order P-4.

¹⁴ Order M-1083.

¹⁵ Orders P-184 and P-890.

¹⁶ Orders P-741 and P-1536.

¹⁷ Order PO-2574.

time, I find that the NPCA's preparation time of 17.5 hours is reasonable. Accordingly, I will uphold its preparation fee of \$525.00 corresponding to 17.5 hours of preparation time at the allowable fee of \$30.00 per hour.

Conclusion

[39] The appellant has paid the amount of \$765.00 in fees in this appeal. As I have only upheld \$525.00 of these fees, I will order the NPCA to refund the difference in the amount of \$240.00 to the appellant.

ORDER:

I uphold the NPCA's fee in the amount of \$525.00 and order it to refund the amount of \$240.00 to the appellant by **September 11, 2017**.

Original Signed by: _____
Diane Smith
Adjudicator

_____ August 11, 2017