Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-3807

Appeal MA18-445

City of Hamilton

July 17, 2019

Summary: A specified public well in the City of Hamilton (the city) was identified as having excessively high levels of arsenic in it, and as a result, public access to the well was restricted. The appellant made a multi-part, detailed request to the city under the *Municipal Freedom of Information and Protection of Personal Privacy Act* (the *Act*) for records related to communications between various officials about the well. The city issued a fee estimate, and the appellant paid half of it, as requested. The appellant also asked for a fee waiver on the basis that her request had to do with public health and safety. The appellant appealed the fee estimate, and the city denied a fee waiver during mediation. During the adjudication of the fee estimate and fee waiver issues, the city issued a final fee decision. The fee arrived at by the city was $298.80. In this order, the adjudicator upholds the city's fee but grants a 25% fee waiver to the appellant.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 , as amended, sections sections 19, 45(1), and 45(4), and Regulation 823, sections 6, 7, 8, and 9.

Orders Considered: Orders 2, PO-1909.

OVERVIEW:

[1] In 2018, the Ontario provincial arsenic standard was adjusted to align with those

of the Canadian government (Health Canada), the World Health Organization, the United States Environmental Protection Agency Standards, and other jurisdictions.[1] This change led to restricted access to a specified well (among others) in the City of Hamilton (the city). Physical access to the well was restricted by a fence, a waiver was required to use the water, and a sign was installed at the site of the well (containing information similar to that on the waiver). The waiver required users to sign that they were aware that the water is not provided for drinking or cooking, is not tested, and is known to contain high levels of arsenic and sodium.

[2] The appellant, who disagrees with this water source being taken away from the public, made a multi-part request under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA*, or the *Act*) to the city for access to records relating to the well. The city sought and received clarification as to the scope of the request from the requester, which was as follows:

> Any and all communication re: the issue of Arsenic or regulations at the water source at Ancaster Well, Sulphur Springs Rd. Wells, mineral water, artesian water, 1109 Sulphur Springs Rd, drinking water systems, private wells, within the timeline of Nov. 2015 to Jan. 18, 2018 Communications:
>
> > Including but not limited to communications of any and all employees of Public Health Services with:
> >
> > 1. [a named councillor]
> >
> > 2. Hamilton Conservation Authority all parties: [the] CAO, [two named individuals], and other staff members as well as any Board members whether on the executive Board, advisory Board, Board of Directors,
> >
> > 3. [a named MPP]
> >
> > 4. [a named Ministry of Health official]
> >
> > 5. Ministry of Health and Long-Term Care
> >
> > 6. Ministry of Environment and Climate Change (MOECC)
> >
> > 7. city staff who were responsible to provide options that were aborted on Nov. 13, 2017.

---

[1] Attachment to the city's representations: Hamilton Conservation Authority Factsheet, "Access to the Ancaster Well is Changing." Retrieved from http://conservationhamilton.ca/wp-content/uploads/sites/5/2017/12/HCA_AncasterWell2017_3.pdf

[3] About four months later, the city issued a fee estimate of $334.00 to the appellant and a notice of time extension of 60 days due to the volume of responsive records likely involved (about 995 pages, and possibly another 4,300).[2] The city required half of the estimate to be paid ($167.00) by a certain date, or the city might consider the request abandoned.

[4] The requester asked for a fee waiver in writing. The city asked her to submit representations in support of a fee waiver again, since her e-mail about a fee waiver was sent before the city had issued its fee estimate. The requester did so, basing her claim on public health and safety reasons. She also paid the $167.00 within the time period specified by the city in its fee estimate decision.

[5] The requester (now the appellant) appealed the fee estimate to the Office of the Information and Privacy Commissioner of Ontario (the IPC, or this office).

[6] Initially, she filed an appeal on the basis of deemed refusal, time extension, and failure to disclose documents. However, in contact with this office, she confirmed that she was not pursuing those issues, but was appealing on the issues of fee estimate and fee waiver.

[7] The city issued its decision to deny a fee waiver about four months after the request for it was made. The city stated that there was insufficient evidence that the public health or safety factor at section 45(4)(c) applied, and that a waiver would be an unreasonable shift of the burden to city taxpayers, given the processing costs involved for this request.

[8] Since the issues of fee estimate and fee waiver could not be resolved through mediation, this file moved to adjudication.

[9] As the adjudicator, I began my inquiry under the *Act* by issuing a Notice of Inquiry, setting out the facts and issues, to the city. I sought written representations from the city in response, but the city did not provide any representations, despite being given an extension to do so.

[10] I then sought and received written representations from the appellant, which I shared with the city, on consent, for a reply.

[11] The city then issued a final fee decision to the appellant, stating that the fee was $523.80 and the balance owing (after the 167.00 that the appellant had already paid) was $356.80. Later, in response to the appellant's representations, the city clarified that the $356.80 figure was erroneous, and that the total fee was $298.80. I shared the city's representations with the appellant, on consent, seeking her response to the city's

---

[2] Under section 20(1) of the *Act*.

representations by way of sur-reply. After considering the appellant's sur-reply representations, I determined that no further representations were required and closed the inquiry.

[12] For the reasons that follow, I uphold the city's fee, but grant a 25% fee waiver to the appellant.

ISSUES:

A. Should the city's fee be upheld?

B. Should the city's fee be waived?

DISCUSSION:

Issue A: Should the city's fee be upheld?

[13] The fee at issue is $298.80, and for the reasons that follow, I uphold it.

General principles

[14] Where the fee exceeds $25, an institution must provide the requester with a fee estimate.[3]

[15] 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.[4]

[16] 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.[5]

[17] The fee estimate also assists requesters to decide whether to narrow the scope of a request in order to reduce the fees.[6]

[18] In all cases, the institution must include a detailed breakdown of the fee, and a

---

[3] Section 45(3) of the *Act*.
[4] Order MO-1699.
[5] Orders P-81, MO-1367, MO-1479, MO-1614 and MO-1699.
[6] Order MO-1520-I.

detailed statement as to how the fee was calculated.[7]

[19] 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.

[20] Section 45(1) requires an institution to charge fees for requests under the *Act*. The relevant parts of that section say:

> 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; [and]
> >
> > . . . .
> >
> > (e) any other costs incurred in responding to a request for access to a record.

[21] More specific provisions regarding fees are found in sections 6, 6.1, 7 and 9 of Regulation 823. The relevant provisions in this appeal say:

> 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.
> >
> > . . . .
> >
> > 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.
>
> 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.

---

[7] Orders P-81 and MO-1614.

> (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.

Calculation of the $298.80 fee

[22] The fee is based on a search by the city's Public Health Services division, which located 992 pages of responsive records.

[23] A final review of the 992 pages found that 779 pages contain information that is exempt from disclosure under the mandatory personal privacy exemption at section 14(1) of the *Act* and/or the discretionary exemptions at sections 7(1) (advice or recommendations), and/or 9(1)(d) (relations with governments), and/or 12 (solicitor-client privilege) of the *Act*. In its final fee decision, the city states that the affected pages of the responsive records would either be withheld in part before being disclosed, or would be withheld in full. It would appear, therefore, that the city intends to disclose 213 pages in full, and a number of pages in part. Further, based on the copying charge for 314 pages, it appears that the city is willing to disclose 101 pages in part.

[24] The city's final fee[8] is broken down as follows:

Search	
270 minutes at $7.50/15 min	$135.00
Record preparation	
sever 101 pages at 2 pages/min, at $7.50/15 min	$101.00
Copies	
314 pages at $0.20/page	$62.80

[8] The fee decision released to the appellant stated that the sub-total was $523.80, but in its representations to this office, the city stated that the sub-total cost in its fee decision was misstated and should be $298.80. The city did not explain the error. However, based on my review of the fee estimate and fee decisions, the difference must relate to the search time charged because in the fee estimate, the city had estimated that 540 minutes of search time were needed, but reduced that time by 50%, to 270 minutes. To find that the total cost is actually $298.80, the city must have calculated the search time as being 270 minutes, not 720 minutes.

Sub-total	$298.80
Less payment	($167.00)
Total amount owing	**$131.80**

Search – section 45(1)(a)

[25] As mentioned, the appellant's request, even after clarification, was for communications involving the city's Public Health division and multiple individuals at various named institutions, including two provincial ministries. The city's Public Health staff identified hard copies of 992 pages of responsive records, including, but not limited to, e-mail messages with corresponding attachments. The city reduced the search time related to locating all of these records by 50% from the initially estimated 540 minutes to 270 minutes.

[26] The city's fee is based on 270 minutes of search time charged at the rate allowable by Regulation 823 ($7.50/15 minutes), so I am upholding this portion of the fee. I accept that this charge for a search is reasonable, given that almost 1,000 pages were located from multiple e-mail accounts and areas to search (amongst several identified city councillors and provincial ministries, etc.).

Preparation of records – section 45(1)(b)

[27] Section 45(1)(b) includes time for severing a record.[9] Generally, this office has accepted that it takes two minutes to sever a page that requires multiple severances.[10]

[28] The city charged the appellant for time to sever 101 pages. The rate that the city charged was as specified by Regulation 823 ($7.50/15 minutes), so I uphold this portion of the fee as well.

Copies – section 45(1)(e)

[29] The city charged the appellant for 314 photocopies, at the rate allowable by Regulation 823 ($0.20/copy), so I uphold the city's photocopying fee.

[30] In conclusion, I uphold the city's fee of $298.80.

Issue B: Should the fee be waived?

[31] For the reasons that follow, I will order 25% of the fee to be waived.

---

[9] Order P-4.
[10] Orders MO-1169, PO-1721, PO-1834 and PO-1990.

General principles

[32] Section 45(4) of the *Act* requires an institution to waive fees, in whole or in part, in certain circumstances. In this appeal, the relevant part[11] of section 45(4) says:

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

[33] Section 8 of Regulation 823 sets out additional matters for a head to consider in deciding whether to waive a fee. Those provisions state:

> 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.

[34] 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.[12]

[35] 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.[13]

[36] The institution or this office may decide that only a portion of the fee should be

---

[11] Section 45(4)(b) allows for consideration of whether the payment will cause a financial hardship for the person requesting the record. In this appeal, the appellant did not claim this, and specifically stated that no reason other than that at section 45(4)(c) (public health and safety) needs to be considered.
[12] Order PO-2726.
[13] Orders M-914, P-474, P-1393 and PO-1953-F.

waived.[14]

Fair and equitable

[37] For a fee waiver to be granted under section 45(4), the test is whether any waiver would be "fair and equitable" in the circumstances.[15] Factors that must be considered in deciding whether it would be fair and equitable to waive the fees include:

- whether the actual cost varies from the amount of the fee, and if so, to what extent;[16]
- financial hardship of the appellant;[17]
- public health or safety;[18] and
- other relevant factors.

[38] Although the appellant has asked that her appeal of the fee waiver decision be based on the public health or safety factor, I have considered all of the relevant facts and circumstances before me in coming to my decision on whether a fee waiver would be fair and equitable in the circumstances.

Comparison of actual cost and fee

[39] As mentioned, the city's fee is based on a reduced search time. Therefore, I find that the actual cost of processing the appellant's request exceeds the fee she was quoted. This weighs towards finding that a fee waiver is not fair and equitable in the circumstances.

Financial hardship

[40] For this factor to apply, the appellant must provide some evidence regarding his or her financial situation, including information about income, expenses, assets and liabilities.[19] In this case, the appellant did not do so. Without evidence that payment of the fee will cause the appellant financial hardship, I find that this is not a relevant factor in this case, which weighs against finding that a fee waiver would be fair and equitable in the circumstances.

---

[14] Order MO-1243.
[15] See *Mann* v. *Ontario (Ministry of Environment)*, 2017 ONSC 1056.
[16] Section 45(4)(a) of the *Act*.
[17] Section 45(4)(b) of the *Act*.
[18] Section 45(4)(c) of the *Act*.
[19] Orders M-914, P-591, P-700, P-1142, P-1365 and P-1393.

Public health or safety

[41] Although the subject matter of the request relates to arsenic levels in the water of a specified public well, I will explain why the public health or safety consideration at section 45(4)(c) does not apply in this case, below.

[42] Factors that may be relevant in determining whether dissemination of a record will benefit public health or safety under section 45(4)(c) are:

> • 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
>
> • the probability that the requester will disseminate the contents of the record.[20]

[43] I will examine each of these considerations in turn, below.

Subject matter of public interest

[44] I find that the subject matter of the request is a matter of public interest, rather than a private one, because it involves the water safety of a public well. This weighs towards finding that section 45(4)(c) applies, but it is not determinative of the issue. The fact that the well is publicly owned (or paid for) also cannot be determinative of whether the factor at section 45(4)(c) (public health or safety) applies, as I understand the appellant to argue.

[45] In addition, the appellant also argues that the interest is public, submitting that media coverage "ill advised" the public about an important public health or safety issue. However, I find that she did not sufficiently explain the basis of that submission, so I do not accord it weight.

---

[20] Orders P-2, P-474, PO-1953-F and PO-1962.

Subject matter directly relates to a public health or safety issue

[46] The appellant questions why access to the well had to be restricted. She submits that specific documents are required in accordance with the "Drinking Water Act" for the water source to be taken away from the public. However, the appellant has not specified which provisions of the *Safe Drinking Water Act*[21] were violated by the decision to restrict access to the well, so it is difficult for me to give her argument on this point any weight.

[47] Furthermore, the appellant "personally suspect[s] political conspiracy, collusion, and or plain corruption as these documents have never been produced." She states that her request arises out of the failure to disclose these documents. Because she seeks information about the "chain of command that would be enforcing this public health issue," she would like a full fee waiver. However, I find insufficient evidence for the appellant's beliefs about political conspiracy and the like. It is possible that the undisclosed documents that the appellant refers to are records responsive to this request and have not been disclosed because of the outstanding fee issues, which would be a reasonable alternate explanation for the lack of disclosure thus far. Even if the documents she refers to are not the records responsive to this request, without more than the appellant's stated beliefs about nefarious reasons for the lack of production of these records, I am unprepared to accept her submissions on this point.

[48] Nevertheless, given the nature of the request, which has to do with arsenic levels in a well, I accept that the subject matter of the responsive records directly relates to a public health or safety issue. This weighs in favour of finding that the factor at section 45(4)(c) applies.

Dissemination of the records unlikely to yield a public benefit by disclosing a public health or safety concern

The city's evidence on disclosing risks to the public

[49] The city provided evidence of the health hazards associated with arsenic (which are well-publicized in various publications of Health Canada and the World Health Organization, among others).

[50] What is relevant to this appeal, though, is whether the city publicly disclosed the public health and safety issue with the particular well that is the subject of the request. Having reviewed the evidence provided by the city, I find that it has. The appellant does not dispute that the city provided this information; rather, she appears to argue with the science behind the decision to restrict access to the well, as discussed below.

---

[21] S.O. 2002, chapter 32.

The appellant's evidence on risks to the public

[51] The appellant's representations question the credibility of the information provided to the public, but I find this position to be without merit, for the reasons that follow.

[52] Although the city publicly disclosed the risks of consuming the well's water to the public, the appellant asks, through her representations: "Doesn't it make sense that if this water source is not safe, that we ought to know?"

[53] The appellant states that she is "keenly suspect of the information that has been put out into the public domain" by the Hamilton Conservation authority and the city councilor, and believes it to be "erroneous" and in "violat[ion of] the legal conditions on title." She appears to specifically question the science behind the reason for the closure of the well. Her submissions on this point include the following:

> We also have discovered that the science that supports [b]ottled spring water to have 100 PPB of arsenic/litre states that this level (100 PPB) is safe due to mother nature's synergistic blend of other nutrients, and thus does NOT pose a health risk to those drinking bottled water.

[54] I find that the above submission is a vague assertion that is not well supported by the evidence before me. The appellant does not identify the source of, essentially, a competing scientific claim about arsenic consumption by humans.

[55] Similarly, she argues that "[f]resh spring mineral water is the best source of water for all living kind," but, in my view, that assertion presupposes that the finding that the well has water containing measurably excessive levels of arsenic, a known carcinogen to humans, is wrong.

[56] She also argues that the responsive records could verify whether the water is actually unsafe, or whether, rather, "a corrupt local conservancy …would like to use this water source at a later date for bottled water."

[57] The appellant also questions the underlying decision of the city to restrict access to the well by asking:

> If the city actually believes that the water is unsafe as per the information given to the public, they allow people to drink this water but sign a waiver? This doesn't make sense and why it's important we receive these documents at no charge to us.

It must be noted that I have no legal authority to review the city's decision to restrict access to the well or allow for access with a waiver. I do not find that the city's decision to ask for a signed waiver is sufficient for me to accept the appellant's arguments that the notice to the public about the health and safety risks was scientifically unsound.

[58] Overall, I find that all of these submissions, and those in a similar vein, are assertions that are insufficiently supported by evidence. I have no evidence of any expertise on the appellant's part that would lead me to reasonably question the findings and decisions of the health authorities who restricted access to the well and disclosed the risks of consumption of its water to the public. Therefore, these submissions do not persuade me that the disclosure made to the public about the public health or safety issues associated with the well was erroneous or unreliable.

[59] Furthermore, the appellant relies on Order PO-1909, arguing that the IPC has found that compliance with contamination standards was directly related to a public health or safety concern, but I find that the circumstances in that case and this appeal differ significantly. In Order PO-1909, the IPC found that compliance with contamination standards was directly related to a public health or safety concern, and that the institution was tasked with protecting the safety of the public, so "certain information, almost by is very nature, should generally be publicly available." However, in light of the disclosure made to the public about the high arsenic levels in the well at issue in this appeal, I accept the city's submission that there is little to no evidence that dissemination of the responsive records would benefit public health or safety.

Conclusion on whether dissemination of the records is likely to yield a public benefit by disclosing a public health or safety concern

[60] Although I have found that the subject matter of the records is directly related to a public health or safety issue, I find that dissemination of the responsive records is unlikely to yield a public benefit by disclosing a public health or safety concern because those concerns have already been disclosed to the public. This weighs towards finding that the factor at section 45(4)(c) does not apply.

[61] In Order 2, the IPC recognized that while the term "benefit public health or safety" is not defined in the *Act*, "it does not mean that fees will be waived where a record simply contains some information relating to health or safety matters." The IPC has recognized that "if the information [being sought] is only of marginal value in informing the public, then the public benefit is diminished accordingly."[22]

[62] In this case, the public has already been informed of the health and safety issues associated with human consumption of the well's water, and action has been taken to restrict it. As discussed, the public was informed that the water at the well in question contained excessive arsenic and was unsafe for drinking and cooking; a fence was put up around the well, a waiver was required to use the water, and a sign was posted at the site. In this inquiry, the city provided evidence of notice to the public posted on the city's website, a bulletin issued by the Hamilton Conservation Authority, and a sample of

[22] Order 2.

media coverage on the issue. In light of this disclosure and the actions taken, I find that dissemination of records reflecting communications between officials about the arsenic level in the well would only marginally yield any public benefit by disclosing a public health or safety concern.

Dissemination of the records unlikely to yield a public benefit by contributing meaningfully to the development of understanding of an important public health or safety issue

[63] The appellant argues that 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. In support of this position, she states that there is a group that would like to make the well a natural cultural heritage site, given the history of this water source, which apparently pre-dates 1882. However, I find that this is not the type of consideration that is relevant to a public health or safety issue. I do accept that dissemination of the records could help the public understand how the various government actors addressed the public health or safety issue once it was realized that the well did not comply with the new arsenic standard. Nevertheless, the appellant's submissions do not persuade me that, in these particular circumstances, records of these communications are likely to contribute meaningfully to an understanding of an important public health or safety issue. There is no suggestion, for example, that the disclosure made to the public was made too late and that the public was endangered as a result of the background circumstances leading up to the decision to restrict access to the well.

[64] Therefore, I find that dissemination of the records is unlikely to yield a public benefit by contributing meaningfully to the development of understanding of an important public health or safety issue. This weighs towards finding that the factor at section 45(4)(c) does not apply.

Is there a high probability that the requester will disseminate the contents of the records?

[65] The appellant submits, and I accept, that she will disseminate the contents of the records. This weighs in favour of finding that the factor at section 45(4)(c) applies.

Conclusion about section 45(4)(c)

[66] 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" (both of which are considerations raised by the appellant in this case). There must be

some connection between the public interest and a public health and safety issue.[23] The appellant questions the basis of the decision to restrict access to the well, but has provided insufficient evidence for her position. I give significant weight to the nature of the information disclosed to the public, and the fact that so much of it is readily, publicly available by various authorities charged with public health. In the circumstances of this case, I find that these considerations outweigh the factors that weigh towards finding that section 45(4)(c) applies, and I find that section 45(4)(c) does not apply. As the city argues, it is not clear from the appellant's submissions how the *restriction* of public access to water containing excessive arsenic levels is a health and safety issue warranting a fee waiver.

Other relevant factors

[67] Any other relevant factors must also be considered when deciding whether or not a fee waiver is "fair and equitable". Relevant factors may include:

- 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 has advanced a compromise solution which would reduce costs; and
- whether the waiver of the fee would shift an unreasonable burden of the cost from the appellant to the institution.[24]

[68] I find that the city's responses to the appellant's requests for records and a fee waiver were not timely:

- After clarifying the request in February 2018, the city issued an interim fee decision in June 2018, well after the 30 days set by the *Act*[25] to do so.

---

[23] Orders MO-1336, MO-2071, PO-2592 and PO-2726.
[24] Orders M-166, M-408 and PO-1953-F.
[25] At section 19 of the *Act*.

- In its June 2018 interim decision, the city also advised the appellant that after her deposit was received, the city would need a time extension of 60 business days to process her request, given the volume of records anticipated.

- However, the appellant paid her deposit in July 2018 and in November 2018, and IPC mediator advised the city that it appeared that the city was in a deemed refusal situation at that point.

- By December 2018, well after the 60-day mark, the appellant still had not received an access decision.

- The city subsequently sent the appellant a letter in December 2018 regarding the exemptions it would claim for the first 197 of 995 pages of responsive records that it had reviewed. The letter also stated that the city expected to issue a final access decision for all of the responsive records (including the ones identified in that December 2018 letter) by the end of January 2019, and that an index detailing the pages containing exemptions would accompany a copy of responsive records.

- A final access decision was not issued until April 2019.

- Regarding the fee waiver, the request was made in July 2018, but the city's decision to deny it was made in October 2018.

[69] The timeline noted above, in my view, constitutes very significant delays in responding to the appellant's request. The fact that the city was in deemed refusal for months, even after discussions with the IPC mediator about that, is a factor that weighs significantly in favour of granting a fee waiver, at least in part. While the delay in responding to the fee waiver request was not as significant, the response on the fee waiver was not timely either, also weighing in favour of granting a fee waiver.

[70] The appellant also argues that the city misspelled the address of the well at one point. In processing her request, she has not challenged the scope of the city's search for responsive records, so I do not give this factor any weight.

[71] I have also considered the ways that the city constructively worked with the appellant to reduce costs, and the time involved to process this request relative to what the city will recoup for its efforts. The city pro-actively cut its search fee in half. The city also provided the appellant with information about how to find some of the information she was looking for in publicly available resources. The request involves more than two years' worth of communications between various individuals and institutions, and almost 1,000 pages of responsive records. In light of these circumstances, it is reasonable to believe that granting a full fee waiver would shift an unreasonable burden of the cost from the appellant to the city, and in turn, to city taxpayers.

[72] Balancing the considerations for and against a fee waiver relevant in this appeal,

and given the significant delays that transpired in the processing of her request, I find that it would be fair and equitable to grant a 25% fee waiver to the appellant. Accordingly, the allowable fee is $224.10, and the amount owing by the appellant is $57.10, calculated as follows:

Fee	$298.80
Less 25% fee waiver	**($74.70)**
	$224.10
Less payment	($167.00)
Total amount owing	**$57.10**

ORDER:

I uphold the city's fee, but waive 25% of it such that the amount owing by the appellant is now $57.10.

Original signed by — July 17, 2019

Marian Sami
Adjudicator