

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4331

Appeal MA21-00017

City of Thorold

February 21, 2023

Summary: The appellant sought access to the total citations issued, to properties about which the city had received multiple calls, by the city's bylaw department over a 15-year period. The city issued a fee estimate of \$1050 to the appellant, indicating that it would require 25 hours to search for responsive records and 10 hours to prepare them for disclosure. The city provided no details on how it calculated its fee estimate; it did not base its fee estimate on its actual work to respond to the request, or on a representative sample of the records and/or advice from an individual familiar with the records.

In this order, the adjudicator finds that the city's fee estimate is unreasonable and she does not uphold it. She orders the city to issue a final access decision within 30 days, without recourse to the time extension provisions in section 20 of the *Municipal Freedom of Information and Protection of Privacy Act* and without charging any fees under section 45(1).

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSO 1990, c M.56, sections 20, 45(1) and 45(3).

OVERVIEW:

[1] This order considers an appeal of a fee estimate and a request for a fee waiver, under section 45 of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*).

[2] The appellant submitted a request to the City of Thorold (the city) under the *Act*

for access to information about properties for which the city's bylaw department had received multiple calls. In her request, the appellant sought:

Information on the work order – citation quantities within the bylaw department for the past 15 years.

A total of the calls (be it by phone, website, email, site visit, walk in, etc) that have come in or been created by the city of Thorold related to bylaw infractions for each address in Thorold. (Address can be blocked out except for the [named] address) Each year's total to be reported separately, starting with 2006. Only addresses that have two or more calls come in need to be reported. Sort by the quantity and then by the address.

From the calls that have come in to the city of Thorold, (refer to the description above), how many resulted in a visit to the address by a bylaw officer. Individually listed by year, sorted by quantity and then by address.

A list of addresses that were issued a citation (address can be hidden) for each year since 2006. Report the quantity of citations issued for each address. Sort by quantity and then by address. Ensure that the [named] address is identified.

If the system does not exist to allow for the approach suggested, please provide the data that will allow me to summarize and organize the data as requested.

[3] In response to the access request, the city issued a fee estimate decision of \$1050. The city's decision indicated that processing the access request would require 25 hours of search time (\$750) and 10 hours of records preparation time (\$300). The decision also stated the city did not require a deposit and would defer the entire fee amount until "the record response is completed."

[4] The appellant was dissatisfied with the city's fee estimate decision and appealed it to the Information and Privacy Commissioner of Ontario (the IPC). In her appeal letter to the IPC, the appellant asserted that the fee was excessive and unnecessary, and she asked that the fee be waived.

[5] The IPC attempted to mediate the appeal. During mediation, the city advised that, in accordance with its records retention by-laws, it had seven years of records available and, therefore, only responsive records from 2014 forward are available. The city confirmed that it does not have any records for 2006 to 2013. A mediated resolution was not possible and the appeal was transferred to the adjudication stage of the appeal process.

[6] I decided to conduct an inquiry and sent a Notice of Inquiry to the parties. I

invited and received the parties' representations on the issues set out below.

[7] In this order, I do not uphold the city's fee estimate. I order the city to issue a final access decision within 30 days, without recourse to the extension provisions in section 20 of the *Act*, and without charging the appellant any fees under section 45(1).

ISSUES:

- A. Should the IPC uphold the city's fee estimate of \$1050?
- B. Should the city waive its fee?

DISCUSSION:

A. Should the IPC uphold city's fee estimate of \$1050?

[8] In this appeal, I must decide the reasonableness of the city's fee estimate. To do so, I review the city's fee estimate to decide whether it complies with the *Act* and regulations. The burden of establishing the reasonableness of the fee estimate rests with the city.¹

[9] The *Act* requires the city to charge fees for requests for information.² Section 45 of the *Act* governs fees charged by institutions to process requests. Under section 45(3), an institution must provide a fee estimate where the fee is more than \$25. The purpose of the fee estimate is to give the requester enough information to make an informed decision on whether to pay the fee and pursue access.³ The fee estimate also helps a requester decide whether to narrow the scope of a request to reduce the fee.⁴

[10] The institution can require the requester to pay the fee before giving them access to the record.⁵ If the estimate is \$100 or more, the institution may require the person to pay a deposit of 50 per cent of the estimate before it takes steps to process the request.⁶ Where the fee is \$100 or more, the fee estimate can be based on either:

- the actual work done by the institution to respond to the request; or

¹ Order M-1123.

² Section 45(1).

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

⁴ Order MO-1520-I.

⁵ Regulation 823, section 9.

⁶ Regulation 823, section 7(1).

- 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.⁷

[11] In all cases, the institution's fee estimate must include:

- a detailed breakdown of the fee; and
- a detailed statement as to how the fee was calculated.⁸

The city's fee estimate is not reasonable

[12] As noted above, the city provided the appellant with a fee estimate of \$1050. In both its decision to the appellant and its representations to me, the city states that its fee estimate is \$1050 and its breakdown of the fee is: \$750 for search time based on 25 hours of time at \$7.50 per quarter hour, and \$300 for records preparation time based on 10 hours of time at \$7.50 per quarter hour.

[13] In its representations, the city asserts that its fee estimate should be upheld because it has been diligent in providing detailed and timely responses concerning the appellant's request. The city also states that it has spent a considerable amount of time processing the appellant's request and it has used section 45(1)⁹ to determine its fee. Other than advising that it requires 25 hours of search time to locate records responsive to the request, at a cost of \$750, and 10 hours for records preparation, at a cost of \$300, the city provides no further breakdown of the fee.

[14] In the Notice of Inquiry that I sent to the city, I provided guidance on what constitutes a reasonable fee estimate, including the information in paragraph 11, above. The Notice of Inquiry reproduced section 45(1) of the *Act*, which sets out the items for which an institution is required to charge a fee, and the more specific fee provisions found in sections 6 and 6.1 of Regulation 823, and, it referred the city to the IPC's Guidance Document "Fees, Fee Estimates and Fee Waivers,"¹⁰ which also explains the basis for a fee estimate. Even though the city received this guidance and was invited to provide a detailed breakdown of its fee or a detailed statement as to how the fee was calculated, the city's representations do not address the basis of its fee or explain how the city estimated 25 hours of search time and 10 hours of preparation time. The city's representations do not address how it calculated its fee estimate; they do not provide any additional information on its search and records preparation claims; they do not address how the requested records are kept and maintained, and what actions are necessary to locate the requested records and prepare them for disclosure.

⁷ Order MO-1699.

⁸ Orders P-81 and MO-1614.

⁹ The city's representations mistakenly state section 57(1), which is the fee provision in the *Freedom of Information and Protection of Privacy Act*, the provincial counterpart to the *Act*.

¹⁰ https://www.ipc.on.ca/wp-content/uploads/2018/06/fees-fee_estimates-fee_waivers-e.pdf.

[15] The city's representations show that it did not base its fee estimate on actual work done by the city to respond to the request, or on a review of a representative sample of the records and/or the advice of an individual who is familiar with the type and contents of the requested records. Moreover, the representations do not contain a detailed breakdown of the city's fee or a detailed statement as to how the fee was calculated, as required to establish its reasonableness. I find that the city has not satisfied its burden of substantiating its fee estimate. I find, therefore, that the fee estimate is not reasonable and I do not uphold it.

B. Should the city waive its fee?

[16] As I have determined that the fee estimate is not reasonable, above, and I prohibit the city from charging any fees, below, I do not need to consider whether the fee should be waived.

ORDER:

1. I do not uphold the city's fee estimate.
2. I order the city to issue a final access decision by **March 23, 2023**, without recourse to the time extension provisions in section 20 of the *Act*.
3. The city is not to charge any fees under section 45(1) of the *Act*.

Original signed by: _____
Stella Ball
Adjudicator

February 21, 2023 _____