

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-4415

Appeal MA21-00625

City of Stratford

July 25, 2023

**Summary:** In response to a request submitted under the *Act*, for records related to an agreement entered into by the City of Stratford (the city) and a named company, the city issued a fee estimate of \$8,850 to process the request. The requester appealed the fee estimate. In this order, the adjudicator reduces the fee estimate by 25 per cent, to \$6,551.25.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 45(1); General, R.R.O. 1990, Reg. 823, section 6.

**Orders and Investigation Reports Considered:** Orders MO-3501, PO-3375, PO-3379 and PO-3716.

### OVERVIEW:

[1] This order addresses an appeal of a fee estimate decision made by the City of Stratford (the city) to process a request made under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records related to an agreement entered into by the City and a named company.

[2] The access request was in three parts, the first two parts requesting two letters of intent entered into by the city and the named company and the third part requesting all records relating to the zoning and annexation of land by that company for the purpose of building in or around the city. The appellant identified that he sought responsive records created over a time period of almost three years.

[3] Following receipt of the request, the city advised that it would be charging a fee under section 45(1) of the *Act*. It advised that the estimated fee was \$8,850 based on 295 hours of search time at a rate of \$7.50 per 15 minutes, as set out in paragraph 6 of *Ontario Regulation 823* (O. Reg. 823). The city also advised that before it continued to process the request, it required payment of a deposit of \$4,425, which is 50 per cent of the total amount, as permitted by section 7(1) of O. Reg. 823.

[4] The requester, now the appellant appealed the decision to the Office of Information and Privacy Commissioner of Ontario (the IPC). A mediator was assigned to attempt to assist the parties in reaching a mediated resolution.

[5] During mediation, the appellant requested, and the city provided a somewhat more detailed breakdown of the fee. The appellant paid \$37.50 in fees to receive the letters of intent responsive to the first two parts of his request and \$30 to receive a particular record responsive to part three of his request. Also, the appellant advised that he no longer seeks access to a particular record identified as responsive to part three of his request, for which the city advised the fee was \$47.50.

[6] At the conclusion of mediation, the city maintained its position regarding its fee estimate, confirming the total fee estimate of \$8,735 (the original fee estimate of \$8,850, minus the fee of \$67.50 paid by the appellant for the records that were disclosed and the fee of \$47.50 for the record that the appellant advises he no longer seeks access to).

[7] The appellant confirmed that he continues to appeal the fee estimate of \$8,735 for access to the remaining records.

[8] As a mediated resolution was not reached, the appeal was transferred to the adjudication stage of the process. As adjudicator, I decided to conduct an inquiry. I sought and received representations from the parties which were shared between them in accordance with the IPC's *Practice Direction 7* in its *Code of Procedure*.

[9] For the reasons that follow, I reduce the city's fee estimate by 25 per cent, to \$6,551.25.

## **DISCUSSION:**

[10] The sole issue to be determined in this appeal is whether the city's fee estimate should be upheld.

[11] Institutions are required to charge fees for requests for information under the *Act*. Section 45 governs fees charged by institutions to process requests.

## **Fee estimates and deposits**

[12] 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 or not to pay the fee and pursue access.<sup>1</sup> The fee estimate also helps requesters decide whether to narrow the scope of a request to reduce the fee.<sup>2</sup>

[13] The institution can require the requester to pay the fee before giving them access to the record.<sup>3</sup> 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.<sup>4</sup>

[14] 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
- 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>5</sup>

[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.<sup>6</sup>

[16] The IPC can review an institution's fee and can decide whether it complies with the *Act* and regulations.

## **Items an institution must charge a fee for**

[17] Section 45(1) sets out the items for which an institution is required to charge a fee. Those that are relevant to this appeal are:

45(1) 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;

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<sup>1</sup> Orders P-81, MO-1367, MO-1479, MO-1614 and MO-1699.

<sup>2</sup> Order MO-1520-I.

<sup>3</sup> Regulation 823, section 9.

<sup>4</sup> Regulation 823, section 7(1).

<sup>5</sup> Order MO-1699.

<sup>6</sup> Orders P-81 and MO-1614.

....

[18] More specific fee provisions are found in section 6 Regulation 823. Section 6 states, in part:

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.

....

## **Representations**

### ***City's representations***

[19] To explain its fee estimate, the city submits that the access request was for a significant and large number of records over a period of approximately three years. The city also submits that the request was for "[a]ny and all correspondence, minutes, agendas, agreements, contracts, briefing notes, staff reports, studies, calendar entries, video or audio recordings, reimbursement requests, travel itineraries, telephone logs, lobbyist registrations and visitor logs." It submits that due to its scope and breadth, it "necessitated a significant large-scale search to be completed by several city departments and staff." They also note that the search required a review of both electronic and paper files.

[20] The city submits that due to the scope of the request, immediately following its receipt, it sought the advice of several experts including staff in the Chief Administrative Office, Infrastructure and Development Services Department, Corporate Services Department, and the City Solicitor as they are all familiar with the type and contents of the requested records. The city also identified, by title, 10 specific staff who were consulted or involved in the search for responsive records.

[21] The city submits that its fee estimate is based on the approximate amount of search time required to locate any responsive records, taking into consideration the time period identified in the request and the significant number of staff involved in the project through that time period who need to be consulted or whose files needed to be searched. The city submits that the staff involved in the searching for responsive

records used several key words and terms and reviewed both electronic and paper files. The city submits that the departments estimated their search time to the closest quarter hour and indicate the steps taken in order to respond to the request.

[22] The city provided a chart to demonstrate the search time incurred by the various city departments to complete an entire search of both the electronic and paper files in their departments in order to identify those which were responsive. I have summarized the chart below:

<b>Part of Request</b>	<b>Record(s) sought</b>	<b>Search time</b>	<b>Departments involved in search</b>	<b>Fee estimate</b>
1.	Letter of Intent	15mins	Chief Administrative Office	\$7.50
2.	Binding Letter of Intent	1hr	Chief Administrative Office	\$30.00
3.	Any and all correspondence, minutes, agendas, agreements, contracts, briefing notes, staff reports, studies, calendar entries, video or audio recordings, reimbursement requests, travel itineraries, telephone logs, lobbyist registrations and visitor logs between March 1, 2018 and January 8, 2021 related to Council's request for a Minister's Zoning Order for [named corporation], its parents and affiliates, and to the zoning and annexation of land for use by [named	293hrs 45mins	Chief Administrative Office (three staff searching email, electronic and paper files - 164hrs for a fee of \$4,920)  Infrastructure and Development Services – Engineering, Building, Planning, Environmental Services (three staff searching email, electronic and paper files – 99.75hrs for a fee of \$2,992.50)  Corporate Services Department – Clerk's Office (one staff member searching email, electronic and paper files 30hrs for a fee of \$900)	\$8,812.50

	corporation] for the purpose of building in or about the City of Stratford and O Reg. 365/20.			
<b>Total</b>		<b>295hrs</b>		<b>\$8,850.00<sup>7</sup></b>

[23] The city submits that the fees for search time were calculated at a rate of \$7.50 per 15 minutes as set out in paragraph 3 of section 6 of O. Reg. 823. The city states that its fee estimate did not include any fees associated with the preparation of records and it has decided that it will forgo any fees over and above those set out in the fee estimate.

[24] The city notes that upon payment of the fee estimate the city would continue with the processing of the request including a review of the responsive records. It notes that a preliminary estimate is that 60 to 75% of the records found would be released in full or in part. It submits that it is likely to apply a number of exemptions to portions of the records, in particular: sections 7(1) (advice or recommendations), 10(1) (third party information), 11(a) and (e) (economic and other interests), 12 (solicitor-client privilege) and 14(1) (personal privacy).

[25] The city submits that its fee estimate is fair and reasonable in the circumstances taking into account the number of years included in the request, the scope of the request, and the number of city representatives consulted to assist with the search and processing of the request.

[26] The city requests that the IPC uphold its fee estimate and cites IPC Orders PO-3375, PO-3379 and PO-3716 which it submits have found that where a request is broad and involves records that are likely to be dispersed throughout an institution, a high search fee and preparation fee may apply. The city submits that these orders have confirmed that it is the breadth and scope of the request, rather than the method of calculation, that results in the significant fee estimate.

***Appellant's representations***

[27] The appellant disputes the city's fee estimate stating that it is "exorbitant."

[28] He also submits that there is a lack of detail in the city's estimate, noting that the only detail that was provided is the list of the city departments charged with conducting searches for responsive records. He submits that "[s]coping the request is not possible without some detail as to the cost attributable to each type of record."

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<sup>7</sup> As indicated above, the total fee estimate that is being appealed is \$8,735, which is \$8,850 minus the \$67.50 already paid by the appellant for the records that were disclosed and the fee of \$47.50 for a record the appellant has confirmed he no longer seeks access to.

[29] The appellant submits that without further detail about the records that the city has identified as responsive or the records to which they may grant him access to, he cannot make an informed decision about which records to pursue. He notes that the city offered to release, for a fee, a document that had already been released sometime before and states that he is not interested in paying for documents which are already in the public realm or are duplicates of documents he already has access to.

[30] He notes that the city's representations indicate that the records have already been searched for and located. He submits that he should not be retroactively charged for a search that is already conducted.

[31] Finally, the appellant submits that there is a public interest in the disclosure of the records that he has requested.

### **Analysis and findings**

[32] Based on my review of the evidence, I find that the city has not provided sufficient evidence to establish that the entirety of its fee of \$8,735 is reasonable and recoverable under the *Act*. Accordingly, I have reduced the city's fee estimate for the manual search time by 25 per cent; however, I uphold the remainder of its fee estimate.

[33] As indicated above, where the fee is \$100 or more, a fee estimate can be based on 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>8</sup> It appears that the city based its fee estimate on the advice of a number of individuals who it identified as being familiar with the type and content of the records being sought. The city is entitled to base its fee estimate on this and I take no issue with it.

### ***Search: section 45(1)(a)***

[34] The city's fee estimate of \$8,735 is based entirely on the hours of search time required to locate records responsive to the request. The city has identified 10 individuals knowledgeable about the type and content of the requested records who were charged with conducting searches for records in various departments of the city and/or providing an estimate of the time required. The search time set out in the city's fee estimate appears to have been calculated based on their advice. The total number of hours the city estimates as being required for knowledgeable staff to search for responsive records in their respective areas of the city is 295 hours.<sup>9</sup>

[35] I acknowledge that the search time and corresponding search fee estimated by the city is significant. However, I accept that, in this case, the request is broad in scope.

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<sup>8</sup> Order MO-1699.

<sup>9</sup> The precise fee being disputed here is 295 hours minus the hours for the two records that have already been disclosed to the appellant and the record that the appellant no longer seeks access to.

It captures a very wide variety of types of records, kept in several different departments of the city. I also accept that the request covers a fairly broad period of time, almost three years, requiring those charged with searching for the wide variety of types of records to review a significant number of records in order to identify those which might be responsive to the appellant's request. Finally, I accept that the individuals asked by the city to engage in searches for responsive records are employees knowledgeable about the nature and content of the responsive records and that their estimates on the time required to search for and locate records and the city is entitled to rely on their advice to calculate the search time required and the corresponding estimated fee for that search.

[36] Past IPC orders have found that where a request is broad and involves records that are likely to be dispersed throughout an institution, and where a search generates a significant number of responsive records which require a considerable amount of work to process by a number of different staff in a number of different departments, a high search fee may apply.<sup>10</sup> These orders have found that, in that regard, it is the breadth or scope of the request rather than the method of calculation that results in the significant fee estimate. In this appeal, I similarly find that it is the breadth and scope of the request that results in the large fee estimate and that the city's method of calculation is reasonable.

[37] However, the city has not provided any detail on how the requested records are kept or maintained or the approximate number or types of records that would likely be identified as responsive to justify the significant amount of time that it indicates is required to conduct the search for responsive records. As indicated above, one of the purposes of a fee estimate is to give a requester enough information to make an informed decision on whether or not to pay the fee and pursue access.<sup>11</sup> In my view, the lack of detail about the approximate number and/or types of records that will be identified as responsive to the request and provided to the appellant, somewhat hinders the appellant's ability to make an informed decision about whether to pay the fee and pursue access to the records. That said, another purpose of the fee estimate is to help a requester decide whether to narrow the scope of a request to reduce the fee.<sup>12</sup> There is no indication before me to suggest that the appellant has attempted to reduce the fee by working with the city to narrow the scope of the request, which as already discussed is extremely broad in scope, or otherwise identify more precisely, the types of records that he seeks.

[38] Having considered the city's fee estimate in light of all of the circumstances of this appeal, I uphold part of the city's fee estimate. However, the city's failure to provide more specific detail about the approximate number and type of responsive records that the appellant will ultimately be granted access to warrants a reduction of

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<sup>10</sup> See for example, Orders MO-3502, MO-3501, PO-3375, PO-3379 and PO-3716.

<sup>11</sup> Orders P-81, MO-1367, MO-1479, MO-1614 and MO-1699.

<sup>12</sup> Order MO-1520-I.



the fee by 25 per cent. As a result, I reduce the fee estimate from \$8,735 to \$6,551.25.

[39] In his representations, the appellant submits that there is a public interest in the disclosure of the records to which he seeks access. Whether there is a public interest in disclosure is not a consideration that is relevant to the determination of whether an institution's fee estimate is reasonable in the circumstances; I will not consider it here. However, whether disclosure of a record is in the public interest is a consideration in a determination of whether a fee waiver should be granted under section 45(4) of the *Act* and section 8 of O. Reg 823.

[40] A requester must first ask the institution for a fee waiver, and provide detailed information to support the request. If the institution either denies this request, or chooses to waive only a portion of the fee, the IPC may review the institution's decision, and can uphold or modify the institution's decision.<sup>13</sup> As the appellant has not made a specific request to the city for a fee waiver with respect to his request, the issue is not before me in this appeal.

**ORDER:**

I uphold the city's fee estimate in part, reducing it to \$6,551.25.

Original Signed by: \_\_\_\_\_  
Catherine Corban  
Adjudicator

\_\_\_\_\_ July 25, 2023

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<sup>13</sup> Section 45(5), Orders M-914, MO-1243, P-474, P-1393 and PO-1953-F.