



**Information and Privacy  
Commissioner/Ontario**

**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER M-411**

**Appeal M-9400104**

**Township of Mariposa**



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## **NATURE OF THE APPEAL:**

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The Township of Mariposa (the Township) received a request from a representative of a taxpayer's group for access to the original written materials provided to three named Council members during meetings of Council held on August 16, 23 and 30, 1993.

The Township located the records responsive to the request and provided the requester with a fee estimate of \$240 pursuant to section 45(1) of the Act. The Township further indicated that access would be granted to all of the subject records in their entirety.

The requester also asked that the Township consider granting a fee waiver under section 45(4) of the Act. The Township decided to refuse to grant a fee waiver. The requester appealed both decisions to the Commissioner's office.

The issues to be decided in this order are whether the fee estimate is in accordance with the terms of the Act and the applicable Regulation, and whether the Township's decision to deny a fee waiver was fair and equitable in the circumstances.

A Notice of Inquiry was sent to the Township and the appellant. Representations were received from both parties.

## **DISCUSSION:**

### **FEE ESTIMATE**

Section 45(1) of the Act reads as follows:

If no provision is made for a charge or fee under any other Act, a head shall require the person who makes a request for access to a record to pay,

- (a) a search charge for every hour of manual search required in excess of two hours 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; and
- (d) shipping costs.

Section 6 of Regulation 823, R.R.O. 1990 (the Regulation), reads, in part:

The following are the fees that shall be charged for the purposes of subsection 45(1) of the Act:

1. For photocopies and computer printouts, 20 cents per page.
- ...
3. For manually searching for a record after two hours have been spent searching, \$7.50 for each fifteen minutes spent by any person.
4. For preparing a record for disclosure, including severing a part of the record, \$7.50 for each fifteen minutes spent by any person.
- ...
6. For any costs, including computer costs, incurred by the institution in locating, retrieving, processing and copying the record if those costs are specified in an invoice received by the institution.

In reviewing the Township's fee estimate, my responsibility under section 45(5) of the Act is to ensure that the amount estimated is reasonable in the circumstances. In this regard, the burden of establishing the reasonableness of the estimate rests with the Township. This burden will be discharged when the Township provides detailed information as to how the fee estimate has been calculated, and if it produces sufficient evidence to support its claim.

In its decision letter, the Township indicated simply that its fee estimate is \$240, and that this total is comprised of 10 hours for "search time and preparing the records for disclosure". No further breakdown of the location and extent of the search being undertaken or what the preparation of the records might entail was provided.

In its representations, the Township indicates that the actual search time for two of the three Council members to locate the responsive records was one and three-quarter hours and two hours, respectively. It then describes the search that the third councillor would have to undertake, and argues that six hours are required for this individual to locate the responsive records in his files. As these records relate to material put before Council in August 1993, I find that a search taking six hours to be unreasonable in the circumstances, particularly since the other individuals were able to locate their copies in two hours or less.

Accordingly, I will allow a total of six hours for the search for responsive records. The fee payable is, therefore, to be calculated as follows:

- four hours (six hours less two hours of free search time) x \$30 per hour = \$120.

In addition, the Township may charge the appellant \$0.20 per page (as set out in the Regulation) for the photocopying of the responsive records. Since not all of the records have yet been located, I am unable to determine the precise amount of the copying charges.

## **FEE WAIVER**

The provisions of the Act relating to fee waiver appear in section 45(4) of the Act, which states as follows:

A head shall waive the payment of all or any part of an amount required to be paid under this Act 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 in the regulations.

In Order P-474, Assistant Commissioner Irwin Glasberg found that the appropriate standard of review for decisions under section 57(4) of the provincial Freedom of Information and Protection of Privacy Act (which is the equivalent of section 45(4) of the Act) is one of correctness. In that same order, Assistant Commissioner Glasberg also found that the phrase "in the head's opinion" means only that the head of an institution has a duty to determine whether it is fair and equitable in a particular case to waive a fee, and this wording does not affect the statutory authority of the Commissioner and his delegates to review the correctness of that decision. I agree with these conclusions and adopt them for the purposes of this appeal.

In his letter to the Township requesting a fee waiver, the appellant did not make reference to any of the factors listed in section 45(4) of the Act or to any other circumstances which might favour the granting of a fee waiver. Following my review of the representations of the parties, and considering all of the circumstances of the appeal, I find the decision of the Township to deny a fee waiver to the appellant to be fair and equitable.

## **ORDER:**

1. I allow the Township to charge \$120 for search time.
2. I uphold the authority of the Township to charge fees for the photocopying of the requested records at a rate of \$0.20 per page.

[IPC Order M-411/October 26,1994]

3. I uphold the decision of the Township not to grant the appellant a fee waiver.

Original signed by: \_\_\_\_\_  
Donald Hale  
Inquiry Officer

October 26, 1994