Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER M-514

Appeal M-9400642

Durham Regional Police Services Board

80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9195
TTY: 416-325-7539
http://www.ipc.on.ca

NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The appellant submitted a request for information to the Durham Regional Police Services Board (the Police). The preamble to the request describes the general parameters of the information sought. It states, in part, as follows:

> The information we are requesting is pertinent information which relates directly or indirectly to [the appellant] or [the appellant's] matter, including the incident giving rise to the charge against him, the subsequent processing of the charge against him and the handling of his matter including, without limitation, records of communication with other police officers, reporters, citizens, representatives of [the appellant], etc.

The request goes on to seek access to the notebook entries and the record of shift for 20 named police officers, for specified dates. With respect to the notebook entries, the request states that these should be "... supplied as they appear chronologically in the memo note-books ...".

In a subsequent clarification of this request, the appellant indicated that he is seeking access to the following:

> (1) The officers' memo note books of the officers indicated and for the dates indicated [in the request];
>
> (2) A record of shift for each of the officers identified on the dates identified [in the request]; and
>
> (3) All information relating to [the appellant] in the possession of [the Police] or available to [the Police] relating directly or indirectly to [the appellant] and the charge against him and the handling of such charge, including without limitation, records of communication with other police officers, reporters, citizens, representatives of [the appellant], etc. Such material and information may or may not be contained in the officers' memo note books. Such information may be recorded in other ways. Accordingly, we are requesting this information, no matter how such information is recorded or preserved. It may be on computers, in files, in note books, in copies of correspondence or in other forms. To put the matter at its most simplistic, we are asking for all information relating to [the appellant] and [the appellant's] matter in its most general form.

The Police responded to the request, as clarified, with an interim access decision and fee estimate. The fee estimate indicated that the estimated fees, including charges for search time, preparation time, photocopying and shipping charges, would amount to $4,607.40. A deposit in the amount of $2,303 was requested. The interim access decision indicated that access would be granted subject to the exemptions provided by sections 8 and 14 of the Act. These exemptions relate to law enforcement and invasion of privacy.

The appellant filed an appeal of the fee estimate. A Notice of Inquiry was sent to the appellant and the Police. Representations were submitted on behalf of both parties.

DISCUSSION:

FEE ESTIMATE

After receiving the Notice of Inquiry, the Police revised their fee estimate. Accordingly, this order will deal with the question of whether the revised estimate should be upheld. The new estimate may be summarized as follows:

Photocopying charges @ $0.20 per page (652 pages)	$130.40
Preparation time (652 pages) $30.00 per hour x 21.75 hours	$652.50
Shipping charges	$5.00
TOTAL	**$787.90**.

The revised estimate requested a deposit in the amount of $393.95.

A very important consideration with respect to the charging of fees in this case arises from section 45(2) of the Act, which states:

> Despite subsection (1), a head shall not require an individual to pay a fee for access to his or her own personal information.

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual and the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

In their representations, the Police indicate that a total of 1,901 pages have been identified as responsive to the three parts of this request, and that 652 of these pages are subject to fees because they do not contain the appellant's personal information.

To support their view that some records are responsive although they do not contain the appellant's personal information, the Police refer to the wording of the original request, which was for information which relates "directly and indirectly" to the appellant. They interpret the request for notebook pages as requiring access to **all** pages for the dates and officers indicated, whether or not those pages refer to the appellant, because the request asked that these be "... supplied as they appear chronologically in the memo note-books ...". If that interpretation is correct, some of these pages would not contain the appellant's personal

information. The Police also note that records of the officers' shift information would not contain the appellant's personal information.

In my view, the foregoing summary of the representations submitted by the Police in this regard raises the following questions:

(1) Whether the Police have correctly interpreted the request, and whether the parts of the records which do not contain the appellant's personal information are in fact responsive;

(2) Whether the fee estimate for responsive records which do not contain the appellant's personal information is in accordance with the fees provisions of the Act and regulation.

I will deal with each of these issues in turn.

Interpretation of the Request/Responsiveness of Records

For organizational purposes in addressing this issue, I will consider the request in three parts, based upon the appellant's clarification which is outlined on page 1 of this order.

Part 1

This part of the request was for notebook entries for a list of specified officers and dates. I am of the view that this is modified by the "general parameters" stated in the appellant's initial request and quoted in the first paragraph of this order, to the effect that the information sought is that which "relates directly or indirectly to the appellant or the appellant's matter". I do not agree with the Police's assertion that, because this part of the request required that the note-book pages be "... supplied as they appear chronologically in the memo note-books ...", all pages in these notebooks are responsive whether or not they contain information about the appellant or his matter.

In my view, only the parts of the notebooks which refer to the appellant or his matter are responsive, and the requirement for presentation in chronological order only relates to pages which are responsive. Moreover, in my view, in the context of this request and the incident to which it relates, any information in these notebooks which "relates directly or indirectly to the appellant or the appellant's matter" would constitute his personal information. Accordingly, I find that the Police are not entitled to charge a fee for granting access to records responsive to part 1 of the request, as I have interpreted it.

Part 2

This refers to the "record of shift" for specified officers and dates. I agree with the Police's interpretation of this part of the request, and in my view their assessment that responsive records would not contain the

appellant's personal information is correct. Based upon my review, it appears that approximately 130 of the 652 pages identified by the Police as not containing the appellant's personal information relate to part 2 of the request. I will consider whether to uphold the fee estimate with respect to these records later in this order, under the heading "Are the fees to be charged with respect to responsive records in accordance with the Act and Regulation?".

Part 3

This is the most difficult part of the request to interpret. As summarized in the clarification quoted on page 1 of this order, this part of the request is essentially seeking "... all information relating to [the appellant] and [the appellant's] matter in its most general form".

Having reviewed the request and the clarifications submitted on behalf of the appellant, I agree with the Police that this part of the request should be interpreted broadly. Moreover, given that other individuals were investigated and, in some instances, charged in connection with the appellant's matter, it is possible that some responsive records would not contain the appellant's personal information and, for that reason, could be subject to fees under the Act.

The Police have based their decision about what records should be subject to fees on a page-by-page analysis. In the view of the Police, pages which contain the appellant's personal information will not attract fees, while pages which do not contain such information will attract fees. An alternative approach, which I will explore in more detail below, would result in the charging of fees only for **records** (as opposed to pages of records) which do not contain the appellant's personal information.

I did not consider this to be an issue with respect to records responsive to part 1 of the request because I found that all responsive parts of those records would contain the appellant's personal information and fees could not be charged. In that situation the method of analysis makes no difference. Similarly, with respect to part 2, I found that the responsive records would **not** contain the appellant's personal information and fees could be charged. Again, the method of analysis makes no difference.

With regard to records responsive to part 3, however, I believe that the method of analysis is an issue, because of the nature of the records requested. Some pages in a responsive record could contain the appellant's personal information, while other pages in that same record, equally responsive to part 3 of the request, may not contain the appellant's personal information. For example, where the Police have determined that a four-page letter containing information about the appellant's matter is responsive to part 3, and only pages 1, 2 and 3 of that letter contain the appellant's personal information, the analysis conducted by the Police would mean that fees may be charged in connection with page 4, but not for pages 1, 2 and 3. If, on the other hand, the record-by-record approach is employed, no fees could be charged in connection with this record.

In my view, the approach taken by the Police is inconsistent with the legislature's intention in enacting section 45(2). The aim of that section is to enhance the rights of individuals to obtain access to their own personal

information. An approach which applies this exemption from payment only to those **pages of a record** which contain an individual's personal information would frustrate this legislative intention. I believe that, on the contrary, it was the legislature's intention to apply this exception to payment of fees to **records**, not pages of records, which contain the requester's own personal information.

In my view, the approach advocated by the Police would be an undue restriction on the ability of individuals to obtain access to records containing their own personal information. Moreover, if adopted, this approach would engender considerable confusion with relation to charges for search time. It is unclear whether it would be possible to charge a fee for locating a record in which some pages contain the requester's personal information and some do not, or whether a fractional assessment would have to be made with regard to each record in that category. Accordingly, in my view, this approach could not be applied to search time, and its adoption for other types of fees would lead to an unduly complex assessment of fees in cases where parts of records do contain the requester's personal information and others do not.

The record-by-record approach to this question, by contrast, is relatively straightforward, can apply to all types of fees, and is, in my opinion, consistent with the legislature's intention. Accordingly, in my view, it is the approach which should be applied.

This conclusion is consistent with the approach set out in Order M-352, with respect to the method of analysis for deciding whether access issues relating to the requester's personal information should be decided under Part I or Part II of the Act. Part I of the Act deals with requests for general records, while Part II sets out a code for dealing with requests by an individual for access to his or her own personal information. Because of differences between the exemptions in Parts I and II of the Act, I found in Order M-352 that it was the legislature's intention, in enacting Part II, to confer a higher right of access to the requester's own personal information. I also concluded that a record-by-record analysis would best serve that intention. In other words, any **record** containing the requester's own personal information would be analyzed under Part II.

In my view, section 45(2) is intended to serve a similar legislative intention regarding access to one's own personal information, and an approach consistent with that taken in Order M-352 is the best way to ensure this.

For all these reasons, I have determined that the best way to implement the legislature's intention that individuals should not pay fees for access to their own personal information is to interpret section 45(2) as applying to **records** which contain the requester's personal information.

In the circumstances of this appeal, therefore, I will order the Police to review these records again and assess fees only with respect to **records** which do not contain the appellant's personal information.

Are the fees to be charged with respect to responsive records in accordance with the Act and Regulation?

Based upon my interpretation of part 1 of the request, I have not upheld any fees in that regard and accordingly, I will not be considering the correctness of the estimate with respect to that part of the request in this discussion.

Based upon my findings with respect to the method of analysis to be applied to records responsive to part 3, with a view to deciding whether section 45(2) permits a fee to be charged, I will be ordering the Police to prepare a new decision with respect to fees for that part of the request. By necessary implication, I have not upheld the existing estimate with respect to that part of the request, and I will not consider its correctness here.

However, I have found that the Police are entitled to charge fees with respect to 130 pages of records which are responsive to part 2 of the request. Accordingly, I will now consider whether the fees charged in that regard are consistent with the applicable provisions of the Act and Regulation.

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 Reg. 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.
> ...

> 4. For preparing a record for disclosure, including severing a part of the record, $7.50 for each fifteen minutes spent by any person.
>
> ...

The per page charge for photocopies in the estimate ($0.20 per page) is consistent with the provisions of the Regulation. Applied to the 130 pages responsive to part 2 of the request, this produces a photocopying charge of $26.

The representations of the Police indicate that the charge for preparation time is based upon 2 minutes per page. In my view, this is a reasonable estimate of preparation time. Based upon 130 pages, this would mean total preparation time of 4 hours and 20 minutes. The fee permitted by the Regulation in this regard (based upon $7.50 per fifteen minutes, or $30 per hour) is $130.

I also find that if the Police incur a delivery charge of $5.00 they may pass this on to the appellant pursuant to section 45(1)(d).

Accordingly, I uphold estimated fees of $161 with respect to the records responsive to part 2 of the request. If the actual number of photocopies, or the required preparation time or delivery charges are lower than this estimate, the Police will be obliged to reduce their fee accordingly.

I must now decide what provisions to include in this order to give practical effect to the decisions I have made, and in particular, what to order about a final access decision.

As noted previously, the Police have issued an interim access decision to accompany their fee estimate, as contemplated in Order 81. However, Order 81 stipulates that such interim decisions are permitted where the record would be unduly expensive to produce in order for the institution to make a final access decision. In this case, however, the Police have already identified the responsive records, some of which have been provided to this office in connection with this appeal. In my view, under these circumstances, it would be appropriate for me to order the Police to make a final access decision on the records which are determined to be responsive, based upon the provisions of this order.

In this regard, I note that the decision letter initially issued by the Police indicates that the exemptions provided by sections 8 and 14 may be claimed. In the preceding discussion, I have indicated above that fees may be charged in connection with part 2 of the request. However, I have some concerns about the appellant paying these fees if these records are to be entirely or substantially withheld in the final access decision, and I would like to set out some guidelines for the Police to consider in this regard.

Given the mandatory character of the exemption in section 14, and the nature of the information contained in the records responsive to part 2, it is possible that the Police will decide to apply that section to exempt virtually all of the information in these pages which is of interest to the appellant, and the parts to be disclosed would thus contain no useful information. In order to prevent the appellant from paying fees for

information which is of no interest to him, I direct the Police to indicate very clearly, in their final access decision, the types of information (if any) to be withheld from the records responsive to part 2.

Moreover, in my view, disclosure of a record which, after severances have been applied, consists of disconnected words and phrases, would be a misinterpretation of the severance provisions in section 4(2). It was held in Order 24 that such a disclosure would not be a reasonable interpretation of the parallel provision in the provincial Freedom of Information and Protection of Privacy Act (which appears in section 10(2) of that statute). I also direct the Police to bear this principle in mind in deciding whether or not to sever those records or withhold them in their entirety. For any records entirely withheld, there would be no preparation time and no photocopy charges, so (given that no fees have been claimed for search time) no fee could be charged for such records.

ORDER:

1. I order the Police to make a final access decision regarding records responsive to part 1 of the request as interpreted in this order, and to forward a letter setting out this decision (and any records to be disclosed) to the appellant within thirty (30) days after the date of this order, without recourse to a time extension.

2. I order the Police not to charge a fee in connection with records responsive to part 1 of the request as interpreted in this order.

3. I order the Police to make a final access decision with regard to records responsive to part 2 of the request, and to forward a letter setting out this decision to the appellant within thirty (30) days after the date of this order, without recourse to a time extension, and bearing in mind the directions set out above pertaining to the contents of this decision and the application of severances to these records.

4. I uphold a fee estimate with respect to part 2 of the request, in the amount of $161, subject to the proviso that if the actual preparation time or number of photocopies is less than that contemplated in arriving at this figure, it is to be reduced accordingly.

5. I order the Police to make a final access decision with respect to records responsive to part 3 of the request, and to forward a letter setting out this decision to the appellant within thirty (30) days after the date of this order, without recourse to a time extension.

6. I do not uphold the fee estimate in connection with part 3 of the request, and if fees are to be charged with respect to this part of the request, I order the Police to calculate them based upon a record-by-record analysis with respect to the application of section 45(2) as described in this order, and to state the applicable fees in the decision letter referred to in Provision 5.

7. In order to verify compliance with this order, I further order the Police to provide me with copies of the correspondence referred to in Provisions 1, 3 and 5 within thirty-five (35) days after the date of this order. This should be sent to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: April 28, 1995
John Higgins
Inquiry Officer