



Information and Privacy
Commissioner/Ontario

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

ORDER M-509

Appeal M-9400732

City of Mississauga



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/Télé: 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 City of Mississauga (the City) received a seven-part request for information relating to a specified woodlot which it owns. The City decided to grant access to the information requested and provided a fee estimate of \$92.50. The requester asked that he be granted a fee waiver, which was denied by the City. The requester then appealed the City's decisions on both the amount of the fee and the denial of a fee waiver.

A Notice of Inquiry was provided to the appellant and the City. Representations were received from the City only.

The issues to be decided in this order are whether the fee was calculated in accordance with the terms of the Act and the relevant regulation and whether the decision of the City to deny the fee waiver was fair and equitable in the circumstances.

DISCUSSION:

CALCULATION OF THE FEE

The intention of the Legislature to include a "user pay" principle is clear from the wording of section 45 of the Act. The costs of the search to locate records which are responsive to the request and charges related to making the records available to the requester are set out in the Act and the regulations made under the Act. Where no provision is made for a fee to be charged under any other legislation, sections 45(1) and (6) of the Act provide that the City shall require a requester to pay for costs related to the request, such as (1) a search charge for every hour of manual search required in excess of two hours to locate a record, (2) the costs of preparing the record for disclosure, (3) computer and other costs incurred in locating, retrieving, processing and copying a record, (4) shipping costs and (5) that the foregoing costs should be paid and distributed according to the regulations made under the Act. Where these costs exceed \$25, the City is also required to provide a reasonable estimate of the costs.

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

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.

Included with its representations, the City provided an affidavit sworn by the City's Freedom of Information and Privacy Co-ordinator (the Co-ordinator) who is also the Manager of Administration and Records. The affidavit states that a search for responsive records was conducted by the Co-ordinator and three staff members of the Community Services Department. The search time required by these four individuals was a total of five hours and ten minutes. The estimated fee of \$92.20 includes \$90 for three hours of search time

beyond the first two hours and \$2.20 for the photocopying of 11 pages, at \$0.20 per page. I note that the original fee estimate included a photocopying charge of \$2.50 for eleven pages. The affidavit reflects the corrected calculation of \$2.20 for photocopying.

As noted above, the appellant did not provide representations on this issue.

Based on the information before me, I find that the fee of \$90 for the search undertaken by the City complies with section 45(1) of the Act. Pursuant to the Regulation, the City is also entitled to charge the appellant \$2.20 for the photocopying of the 11 pages of records located during the search. Accordingly, I uphold the amount of the City's fee estimate.

FEE WAIVER

Section 45(4) of the Act and section 8 of Regulation 517 under the Act set out the factors to be considered by the Ministry when a request for a fee waiver is made. Section 45(4) states, in part, that:

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,

...

(b) whether the payment will cause a financial hardship for the person requesting the record;

...

(d) any other matter prescribed in the regulations.

Section 8 of the Regulation then prescribes, in part, that:

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.

It has been established in a number of previous orders that a person requesting a fee waiver must justify such a request. In addition, I am mindful of the Legislature's intention to include a user pay principle in the Act, as evidenced by the provisions of section 45.

Section 45(4) creates an exhaustive list of the matters the City is required to consider in determining if a waiver of all or any part of a fee is appropriate. The appellant did not submit representations on this issue. I have, however, considered the arguments which he provided to the City in his letter requesting a fee waiver.

In its representations, the City has addressed the appellant's arguments and explained why, after considering the appellant's request for waiver, a decision was made not to waive the fee. Previous orders have set out a number of factors to be considered to determine whether a denial of a fee waiver is "fair and equitable". These factors are:

- (1) the manner in which the institution attempted to respond to the appellant's request;
- (2) whether the institution worked with the appellant to narrow and/or clarify the request;
- (3) whether the institution provided any documentation to the appellant free of charge;
- (4) whether the appellant worked constructively with the institution to narrow the scope of the request;
- (5) whether the request involves a large number of records;
- (6) whether or not the appellant has advanced a compromise solution which would reduce costs.
- (7) whether the waiver of the fee would shift an unreasonable burden of the cost from the appellant to the City.

I have carefully considered the City's representations in light of the factors listed above, as well as the appellant's request for waiver. I find that a waiver of the fee in the circumstances of this appeal would shift an unreasonable burden of the cost of access from the appellant to the City. I find, therefore, that the City's refusal to provide a waiver of the fees to be fair and equitable in the circumstances of this appeal.

ORDER:

1. I allow the charge for search time in the amount of \$90.
2. I allow the charge for providing photocopies of the 11 pages to which access has been granted in the amount of \$2.20.
3. I uphold the decision of the City not to waive the fee.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ April 13, 1995