



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

ORDER M-576

Appeal M_9500264

Town of Valley East



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NATURE OF THE APPEAL:

The Town of Valley East (the Town) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to records relating to "Plan 2000", a report prepared by the Valley East Economic Development Committee (the Committee). Specifically, the request was for financial records, correspondence, and copies of all Town Council Minutes regarding the Committee.

The Town granted access to a number of records and requested a fee of \$229.80. The requester paid the fee and was provided with copies of the records. The Town indicated that copies of all minutes could be obtained from the Committee.

The requester appealed the Town's decision, stating that the fee was excessive and that further records should exist. A Notice of Inquiry was sent to the Town and the appellant. Representations were received from both parties.

DISCUSSION:

REASONABLENESS OF SEARCH

Where a requester provides sufficient details about the records which he or she is seeking and the Town indicates that a record does not exist, it is my responsibility to ensure that the Town has made a reasonable effort to identify any records which are responsive to the request. The Act does not require the Town to prove with absolute certainty that the requested record does not exist. However, in my view, in order to properly discharge its obligations under the Act, the Town must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate records responsive to the request.

The appellant indicates that large sums of disbursements shown in the Committee's financial records have no receipts or explanations, that receipts received do not match the total shown on the disbursement sheet, and that some receipts do not show on the disbursement sheet.

The Town indicates that the 1993 and 1994 financial records are filed in alphabetical order in boxes either in the cellar or in the Accounts Payable section. Searches for the Committee's disbursements and receipts were made by a part-time employee of the Town under the supervision of the Town Administrator. The Town submits that it did manage to retrieve all records.

It is my view that the Town has conducted a reasonable search for the financial records, and I will not order it to conduct a further search. While it may appear that the amounts do not balance, the adequacy of the Town's accounting methods is not an issue which I have authority to address.

The appellant also claims that an individual from the Ministry of Northern Development and Mines (the Ministry) who is overseeing the project informed her that there was a contract between the Ministry and the Town regarding "Plan 2000", and gave her dates of correspondence

between the Ministry and the Town. The appellant states that she contacted the Town and asked for a copy of the contract and the missing correspondence but was told that this information did not exist. Additionally, the appellant indicates that she was seeking access to Council minutes, not Committee minutes, and that Council minutes cannot be obtained from the Committee as indicated by the Town.

The Town claims that in discussions prior to and after the appellant's request, the appellant never mentioned that she was seeking access to correspondence between the Ministry and the Town. The Town indicates that it has now searched for and located 207 pages of minutes and 188 pages of correspondence, and will provide copies of them to the appellant upon payment of a fee of \$109 (one hour search time @ \$30/hour + 395 photocopies @ 20¢ each).

The appellant's original request clearly states that she is seeking access to correspondence and Council minutes. Had I found that the Town's search for records responsive to this part of the request was inadequate, I would have ordered the Town to conduct a further search. In this case, the Town has conducted a further search on its own, and located a large number of records. As the appellant has not had the opportunity to review these records, it is unclear whether an issue regarding the adequacy of this further search remains. Accordingly, the Town must issue a decision letter to the appellant respecting these records. The appellant will have 30 days to appeal that decision.

CALCULATION OF FEES

The Town has charged a fee of \$229.80 for access to records located during its first search, and has indicated its intention to charge a fee of \$109 for access to records located during its second search. The Town has not issued a decision letter to the appellant in respect of the second search. The appropriateness of this fee is not, therefore, something I can address in this order.

Sections 45(1)(a) and (b) of the Act state:

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.

Section 6(1) of Regulation 823, made under the Act, states, in part:

The following are the fees that shall be charged for the purposes of section 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.

...

Photocopying Charges

The Town indicates that the actual number of photocopies provided was 99, for which the appellant was charged \$19.80. Based on this information, I am satisfied that the photocopying charges have been properly calculated according to the Regulation.

Search

The Town's decision letter indicates that "search/time for photocopying" amounted to 9 hours, for which the appellant was charged \$210 (9 hours less 2 free hours @ \$7.50 per ¼-hour). The Town Administrator indicates that the 9 hours includes 3 hours spent photocopying the records.

With respect to charges for photocopying time, 20 cents per page is the maximum amount that may be charged for photocopying, which charge includes the cost of an individual "**feeding the machine**" (Order 184). It follows, then, that the Town is not entitled to charge for the three hours spent photocopying the records for which photocopying charges have already been assessed. Accordingly, the charge for searching for the records is reduced to \$120.

ORDER:

1. I order the Town to issue a decision letter to the appellant with respect to the records located in its second search within fifteen (15) days of the date of this appeal.
2. I uphold the fee charged with respect to the records located in the Town's first search in the amount of \$139.80.
3. I order the Town to provide me with a copy of the letter referred to in Provision 1 within twenty (20) days after the date of this order. This should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ July 28, 1995