



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

# ORDER M-698

Appeal M\_9500236

City of Hamilton



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:

The City of Hamilton (the City) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to all information relating to the requester held by the City located in the City's building, licensing, zoning, legal and real estate departments. The City responded by letter, seeking clarification of the request, but was not successful.

The City then issued an interim access decision and fee estimate. The fee estimate indicated that fees for searching for responsive records in various departments would amount to \$1,059.30. A deposit of \$529.65 was requested. The interim access decision also stated that access would be granted subject to the possible application of the exemptions in sections 7(1), 8 and 12 of the Act. The City also advised that the requester may apply for a waiver of the fee.

The requester subsequently applied for a fee waiver. Upon review of the information provided by the requester, the City advised that it was denying the request for a fee waiver.

The requester appealed the City's decision to deny waiver of the fee.

During mediation, the appellant agreed to narrow the scope of his request to records created between 1985 to 1988 inclusive and between July, 1993 to December, 1993.

The issues in this appeal are the following:

- (1) whether the Act allows the City to charge for time spent searching for records containing the personal information of the requester; and if so,
- (2) whether it was appropriate for the City to issue an interim decision in the circumstances of this case; and
- (3) whether the City's decision to deny the request for waiver of the fees was appropriate in the circumstances of this case.

A Notice of Inquiry was sent to the appellant and the City. The Notice of Inquiry indicated that the appellant had narrowed the scope of his request as described above. Representations were received from the City.

## DISCUSSION:

### CHARGING OF FEES FOR PERSONAL INFORMATION

Section 45(1) of the Act provides that where no provision for a fee or charge is made under any other statute, the institution is required to charge the requester for costs related to search time, record preparation, computer and other costs and shipping costs. The exception to this mandatory requirement is set out in section 45(2) which states as follows:

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

In order to determine whether the City can charge for search time for records containing personal information, I must first determine whether the request was for personal information. I will therefore look to the wording of the request which I will quote below:

All and any information pertaining to myself from specific areas: [b]uilding dept., licensing, zoning, legal, real estate and all areas not mentioned above, letters, files, etc.

At the bottom of the request, the appellant has included two property addresses.

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 my view, the request is for information that relates to the appellant and is therefore, for his personal information.

The City does not dispute the fact that the request is for the appellant’s personal information. In its representations, the City submits that the mandatory exception to the charging of fees in section 45(2) cannot be applied in all circumstances. The City submits that this request is an “exceptional request”. The City sets out the following reasons for its position.

The City states that the request requires a lengthy search for responsive records in four departments. The City advises that the appellant and the City were involved in a civil suit which generated a large volume of responsive records and will require some 35 hours to review. The City points out that while it does not intend to charge for photocopying or preparation costs, it should not be expected to absorb the costs for the search time, particularly in the current economic environment.

The City refers to sections 17(1) and (2) of the Act. Section 17(1) requires a requester to provide sufficient detail about the records sought to enable an experienced employee to identify the records. Where a request does not provide sufficient information, section 17(2) of the Act requires an institution to seek clarification and to “offer assistance in reformulating the request so as to comply with subsection (1)”. The City submits that the request was vague and that its attempts to clarify the request were not successful.

Finally, the City states that the intent of section 45(2) was to allow free access to personal information only in those situations where the records are easily identifiable and readily available. The City submits that the subject request is of a “non-routine nature” and therefore, section 45(2) should not apply.

I have carefully considered the representations of the City with respect to the issue before me. I do not agree with the position put forth by the City. In my view, the intent of the legislation with respect to a request by an individual for his own personal information was very clear: it

accorded a higher right of access to the requester's own personal information. The wording of section 45(2) is mandatory and provides an institution with no discretion to consider "exceptional requests" or "non-routine requests". In my view, section 45(2) applies and the City is precluded from charging a fee for processing the appellant's request.

With respect to the City's submission that it was unable to clarify the request, I note that the Notice of Inquiry forwarded to both the parties indicates that the appellant has narrowed the scope of the request to include only records in a specified time period. In my view, the City can also arrange for the appellant to view the responsive records and identify those for which he needs copies.

The City states that the request is for a large volume of records and that the search time required places an unfair burden on the City at a time when its resources are limited. Section 20(1) of the Act allows the institution to extend the time limit of 30 days where the request is for a large number of records or where the request necessitates a search through a large number of records and meeting the time limit would unreasonably interfere with its operations. However, nothing in the Act as it is presently worded, allows for the charging of fees where the request is for access to the requester's own personal information.

Because I have found that the City is not allowed to charge a fee for the personal information requested, it follows that the City cannot issue a fee estimate and an interim access decision and the issue of the waiver of fee is moot. In conclusion, I find that section 45(2) of the Act applies and I order the City to complete its search and issue a decision on access to the responsive records within 30 days of the date of this order.

### **ORDER:**

1. I do not uphold the decision of the City to charge fees for the personal information requested by the appellant.
2. I order the City to complete its search for responsive records and to issue a decision on access to the appellant on or before **March 4, 1996**.
3. I reserve the right to order the City to provide me with a copy of the decision letter provided to the appellant pursuant to Provision 2.

Original signed by: \_\_\_\_\_

February 2, 1996

Mumtaz Jiwan  
Inquiry Officer