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

ORDER M-706

Appeal M_9500662

City of London

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NATURE OF THE APPEAL:

The City of London (the City) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for access to the names and addresses of all charitable institutions licensed by the City to sell break-open tickets. The requester indicated that the information sought would be found on the applications to sell the tickets and on the licenses. She also advised the City that copies of either of these documents would satisfy her request.

The City responded by advising the requester that it did not have a list showing the addresses for the organizations that had received such licences. It explained that it would have to compile such a list or photocopy the licences or the applications. The City asked the requester to indicate whether she was prepared to pay the fees "to compile the information ..." she was seeking.

The requester contacted the City. As a result of discussions between the requester and an individual from the City Clerk's Department, the City issued a decision indicating that it had prepared a computerized list of the names and addresses of the organizations selling the break-open tickets in the City. The City informed the requester that the charges associated with the preparation of the information were $518.20. Upon receipt of payment of this amount, the City would forward the information.

The requester appealed the amount of the fee.

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

DISCUSSION:

CALCULATION OF THE FEE

As both this request and appeal were filed prior to the Bill 26 amendments, I will decide this appeal under the legislation that was in effect at that time.

The intention of the Legislature to include a "user pay" principle is clear from the wording of section 45 of the Act (Order 111). The fees an institution is required to charge related to processing requests under the Act 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 Act, section 45(1) of the Act provides 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, and (4) shipping costs. Section 45(6) states 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) 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.
> ...
> 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 City's fee estimate, my responsibility under subsection 45(5) of the Act is to ensure that the amount estimated by the institution is reasonable in the circumstances. In this regard, the burden of establishing the reasonableness of the estimate rests with the City (Order 86). In my view, the City discharges this burden by providing me with detailed information as to how the fee estimate has been calculated, and by producing sufficient evidence to support its claim.

The City has provided a very detailed explanation of the process it undertook to respond to the appellant's request.

The City states that, at the time of the request, there were 239 organizations licensed to sell break-open tickets. The paper files for each organization were housed in three drawers of a four foot lateral filing cabinet. The City indicates that each of these files can be voluminous because applications are received and licences issued to most organizations on an ongoing basis due to the popularity of this type of lottery.

Both the City and the appellant agree that the requested information was located on either the application or the licence form, but not in a compiled form. The City submits that:

> The representative of the appellant with whom the Co-ordinator discussed this approach [a "compiled" format] indicated verbally that the [appellant] would be willing to pay any costs that were incurred by the City to prepare and provide a compiled list of the information being sought. The work was then undertaken and the fee estimate letter of October 26, 1995 was sent to the requester.

The work undertaken by the City is broken down as follows:

Set up work with the Management Information Systems (MIS) Co-ordinator and preparation by the MIS Co_ordinator of a shell to be used for inputting information from which the printed list could be generated.	1 hour

Inputting data into system by Clerk's Department staff.	17 hours
Total:	18 hours

The City has also included as part of its representations a breakdown of the exact amount of time spent by the keyboard operator to input the required information into the shell over a period of six days.

The City charged for 16 hours of work (providing two free hours) at $7.50 for each fifteen minutes for a total of $513.60 (including GST). The compiled list was twenty pages long and photocopying charges were $4.60 (20 x $0.20 plus GST). In its submissions, the City revised its fee to $484.00, acknowledging that it may not charge GST under the Act.

The City submits that all of the charges it has levied in this case fall within section 6 of the Regulation as set out above.

In my view, the activities undertaken by the City in this case are more akin to "preparing the record for disclosure" as set out in section 45(1)(b) than for computer and other costs incurred in locating, retrieving, processing and copying a record under section 45(1)(c) and section 6(6) of the Regulation. In Order M-203, Inquiry Officer Donald Hale addressed a similar situation as follows:

> This cost is not, technically, the cost of "preparing the record"; rather, it is the cost of compiling a new record containing the information which is responsive to the request. In my opinion such an activity is entirely in keeping with the intention of section 45 as it is, in these circumstances, the cost of putting the information requested into the form asked for by the requester.

He concluded that charges under section 45(1)(b) could be levied for preparing a record in the form of a list from other sources. He upheld the institution's fees for formatting, typing and proofreading the list.

In this appeal, the City states that the appellant agreed that it should prepare a record in the form of a compiled list.
The charges levied by the City are advantageous to the appellant. That is, the City did not charge for two hours of its time although technically this was not "manual search time" as provided in section 6(3) of the Regulation. The balance of the time was charged at $7.50 for each fifteen minutes which I have characterized as "preparing the record for disclosure" in accordance with section 6(4) of the Regulation. In these circumstances, I find that the City has provided sufficient evidence to establish that the fee of $484.00 is in accordance with the Act and the Regulation.

The appellant maintains that she is not opposed to paying fees which are justifiable and reasonable. In this regard, she has forwarded examples of some of the fees charged, if any, by other municipalities that have responded to similar requests. In those cases in which fees were charged, I have no information about the calculation of the charges or the record management systems

employed by these institutions. Accordingly, it is impossible for me to attach any significance to this information. I note, however, that the fees in the present appeal are not out of line with those charged by these other institutions. In addition, the sole issue before me is whether the fees charged by the City were in accordance with the Act.

I have also considered whether the "manual" approach to the preparation of the records would have resulted in significantly fewer costs to the appellant. While the time required to sever the personal information from the licenses or applications would be less than the inputting time, I find that the City reasonably adopted the approach set out in Order 50 by former Commissioner Sidney B. Linden which I considered in Order P-491. This approach requires that an institution advise a requester that information is available in the form of "raw data" and determine if the requester wants the institution to expend the resources to create a compiled record, if this is the format which has been requested.

Although in the present case, the appellant indicated that she would be satisfied to receive the information in its "raw data" form (severed copies of the licenses or applications), the City did consult with her prior to preparing the compiled list and received an indication that she would be willing to pay for the costs associated with this work. However, in my view, it is possible that the City could have avoided this appeal had it provided the appellant with a fee estimate pursuant to section 45(3) of the Act prior to undertaking the required work.

ORDER:

I uphold the decision of the City to charge a fee in the amount of $484.00.

Original signed by: February 12, 1996
Anita Fineberg
Inquiry Officer