



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

ORDER MO-1299

Appeal MA-990273-1

Amherstburg Police Services Board



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NATURE OF THE APPEAL:

The appellant made a seven-part request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the Town of Amherstburg (the Town). As it appeared that the Amherstburg Police Services Board (the Police) had a greater interest in six parts of the request (Parts 1 and 3 to 7), the Town transferred these parts to the Police under section 18(4) of the Act.

The Police provided the appellant with a fee estimate of \$75.00. This fee estimate was revised during the mediation stage of the appeal because one portion of the request had not been addressed and mathematical errors had been made. The revised fee was \$132.00. This fee was comprised of \$27.00 for photocopying, \$90.00 for search time and \$15.00 for preparation time.

The appellant appealed the fees assessed for search and preparation time only. Fee waiver and the fee estimate for photocopying are not an issue in this appeal.

This office initially sent a Notice of Inquiry to the Police. The representations provided by the Police were then shared with the appellant when a copy of the Notice of Inquiry was sent to her. The appellant also submitted representations.

During the Inquiry stage of the appeal, the Police advised the appellant that no records responsive to Part 6 of the request in fact exist. The Police issued a revised decision letter reducing the required search time to one hour (with a fee of \$30) and the preparation time to one-half hour (with a fee of \$15). As noted above, only these portions of the fee estimate remain at issue in this appeal.

RECORDS:

The request specifically addressed the following subjects:

1. correspondence from the Town and Police to the Ontario Civilian Commission on Police Services (OCCPS) and the Ministry of the Solicitor General pertaining to the delivery of police services in the Town;
3. the dollar amount of legal fees associated with a specific civil suit;
4. the dollar amounts of legal fees associated with a specific judicial review;
5. the dollar amounts of legal fees incurred by the Town with respect to a specific hearing under the Police Services Act (the PSA);
7. the 1998 contract between the Amherstburg Police Association and the Police.

The Police estimate that there are approximately 135 pages of documents which are responsive to Parts 1, 3, 4, 5 and 7 of the request and that portions of some of these records may be exempt under one of more of the exemptions contained in the Act.

DISCUSSION:

Fee Estimate

The charging of fees is authorized in section 45(1) of the Act, and more specific provisions regarding fees are found in section 6 of R.R.O. 1990, Regulation 823. These provisions state:

A head shall require the person who makes a request for access to a record to pay fees in amounts prescribed by the regulations for,

- (a) the costs of every hour of manual search required 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;
- (d) shipping costs; and
- (e) any other costs incurred in responding to a request for access to a record.

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 subsection 45(1) of the Act for access to a record:

- 1. For photocopies and computer printouts, 20 cents per page.
- 2. For floppy disks, \$10 for each disk.
- 3. For manually searching a record, \$7.50 for each 15 minutes spent by any person.
- 4. For preparing a record for disclosure, including severing a part of the record, \$7.50 for each 15 minutes spent by any person.
- 5. For developing a computer program or other method of producing a record from machine readable record, \$15 for each 15 minutes spent by any person.
- 6. The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the record if those costs are specified in an invoice that the institution has received.

In reviewing the Police's fee estimate, my responsibility under section 45(5) is to ensure that the estimated amount is reasonable in the circumstances. The burden of establishing the reasonableness of the estimate rests with the Police. To discharge this burden, the Police must provide me with detailed information as to how the fee estimate has been calculated, and produce sufficient evidence to support its claim.

Search Time

The Police have provided me with a detailed explanation of the time which was required to perform the searches necessary to locate the records responsive to Parts 1, 3, 4, 5 and 7 of the request. Searches were conducted at the offices of the Town's accounts payable department, the administrative records of the Police and the accounts payable records of the former Anderdon Township Police Service, where some of the Town's administrative records were also stored.

Based on the submissions of the Police respecting these searches, I am satisfied that one hour of search time to locate these records is reasonable in the circumstances of this appeal. Accordingly, I uphold this portion of the fee estimate.

Preparation time

In Order 4 (under the Freedom of Information and Protection of Privacy Act), former Commissioner Sidney Linden made the following observations about charges for preparation of record(s) for disclosure:

The fee estimate for preparation included costs associated with both decision making and severing, and I feel this is an improper interpretation of subsection 57(1)(b) [which corresponds to section 45(1)(b) of the Municipal Freedom of Information and Protection of Privacy Act]. In my view, the time involved in making a decision as to the application of an exemption should not be included when calculating fees related to preparation of a record for disclosure. Nor is it proper to include time spent for such activities as packaging records for shipment, transporting records to the mailroom or arranging for courier service.

In my view, "preparing the record for disclosure" under subsection 57(1)(b) should be read narrowly.

The Police have indicated that access will be granted to some of the records, in whole or in part, but that others may require severing. In my view, given that the responsive records total some 135 pages, it is reasonable that 30 minutes be required to perform this exercise. Therefore, I also uphold this portion of the fee estimate.

ORDER:

I uphold the Police's fee estimate of \$30 for search time and \$15 for the preparation of the records.

Original signed by: _____ May 8, 2000
Donald Hale
Adjudicator