



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

# **ORDER MO-1294**

**Appeal MA-990196-1**

**Township of Southgate**



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## **NATURE OF THE APPEAL:**

The appellant made a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the Township of Egremont (now the Township of Southgate) (the Township). The request was for access to records related to road construction and maintenance work for the Township from 1990-1998. The appellant specifically requested access to:

- tender specifications
- contracts
- method of payment calculations
- actual documentation for measurement of aggregate delivery vehicles
- minutes of Council approving payments (including appropriate road account as presented to Council for approval)
- invoices as presented by contractors for payment.

In her request, the appellant stated, "I am aware that there may be a charge of photocopying, which I am prepared to pay. I advise that I am a university student doing research and, as such, I ask for the cost to be kept as reasonable as possible."

The Township informed the appellant that:

... a great deal of staff time would be required to research the records to obtain the information you have requested and then to prepare the records for disclosure in accordance with the provisions of the Act. Taking into account the requirements of subsection 45(3) of the Act and the discretion as to fees for time spent, I believe a reasonable estimate of the fees, and after making a fair and equitable consideration with respect to partial waiver, would be \$400.00.

The appellant appealed the fee estimate, stating that she believes that most of the information requested is "public information." She indicated that she was willing to pay the appropriate photocopying charges, but objected to paying any "superfluous money".

I initially sent a Notice of Inquiry to the Township. The Township did not provide written representations in response, but indicated that it was relying on information submitted before the inquiry. Both parties waived mediation privilege, and I was made privy to their discussions with the Mediation assigned by this office.

## **RECORDS:**

The Township has provided an index of the records it identified as responsive to the request. The index reveals that the Township is prepared to grant access to all of the requested information upon payment of the fee.

## **ISSUES:**

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. The relevant sections of the Act are:

- (1) A head shall require the person who makes a request for access to a record to pay fees in the 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;
- ...
- (e) any other costs incurred in responding to a request for access to a record.
- ...

(3) The head of an institution shall, before giving access to a record, give the person requesting access a reasonable estimate of any amount that will be required to be paid under this Act that is over \$25.

The relevant sections of Regulation 823 are:

6. The following are the fees that shall be charged for the purposes of subsection 45(1) of the Act for access to a record:

- 7. For photocopies and computer printouts, 20 cents per page.
- ...
- 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.
- ...

### ***Manual Search***

The appellant requested access to all road construction and repair tenders for the past nine years. The Township indicated in mediation that instead of directing the appellant to the minutes of the Township Council, which are available to the public, and letting her locate the references to the tenders appeared, the Clerk performed this aspect of the search herself.

The Township's decision did not indicate how many hours of search time would be required to locate the records. However, during mediation the Township indicated that it estimated it would require three hours of search time, which would amount to a \$90.00 charge ( $\$7.50 \times 12 = \$90.00$ ).

The appellant has indicated that the Township informed her verbally at the time of her request that the information was publicly available, and that no "retrieval fees" were necessary. The appellant argues that she was informed by the Clerk that the information is a part of what the Township would be obliged to retrieve without charge, for anyone who asked to see it, and that only copying charges would apply. She also indicated that the Clerk repeated this statement to Council in an open public meeting. The appellant believes that Township staff should have such documentation "at their fingertips."

Other than indicating during mediation that the tender documents are kept "in a back storage room", the Township has not provided representations in support of its search charges.

The appellant is of the view that the Township should have identified which records did require retrieval time, set the fees at that point, given her an estimate of the costs involved, and given her the opportunity to decide the next step (to continue the retrieval, appeal the decision, refine the request or abandon the exercise) before proceeding with her request. Although this issue was characterized by the mediator as “whether the Township has the obligation to clarify the request with the requester before proceeding” in the mediator’s report, in my view it is more appropriately categorized as whether the Township complied with the interim notice procedures discussed in Order 81.

The issue of interim notices was first raised by former Commissioner Sidney B. Linden in Order 81. In that order, Commissioner Linden set out the procedures to be followed where the records are unduly expensive for the institution to produce for review by the head for the purpose of making a decision on access to the records. These procedures contemplate the institution reviewing a representative sample of records, or seeking the advice of knowledgeable staff within the institution who are familiar with the type and content of the records, in order to produce an interim notice containing a fee estimate and an indication of what exemptions might apply.

In this appeal, the Township acknowledges that it could have shortened the required search time by referring the appellant to the Council minutes to identify where the records she was requesting appeared. Additionally, the Township did not provide the appellant or this office with a detailed breakdown of the fee estimate, did not comply with the interim notice requirements, and did not provide representations which explained what other activities, if any, were necessary to locate the records. In the circumstances, I do not uphold the Township’s search charges.

### ***Preparing the Record for Disclosure***

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 Township’s decision letter refers to preparation charges, yet the index of records provided to this office indicates that the requested records will be disclosed in their entirety, without severances. The Township has not explained what other actions are necessary to prepare the records for disclosure and, in my view, no fees for preparation are applicable.

### ***Photocopying charges***

The appellant does not dispute the applicability of fees for photocopying. The index of records does not indicate how many pages of records are at issue, and the Township has not indicated how much of its fee represents charges for photocopying. However, from reviewing the mediation material, it appears that the Township estimates it would charge \$35.00 for photocopying.

I uphold the Township's decision to charge photocopying charges, at a rate of \$.20 per page.

**ORDER:**

1. I do not uphold the Township's fee estimate of \$400.00.
2. I uphold the Township's decision to charge a fee for photocopying the records disclosed to the appellant at a rate of \$.20 per page.
3. I do not uphold the Township's decision to charge a fee for searching or preparing the record.

Original signed by: \_\_\_\_\_  
Holly Big Canoe  
Adjudicator

\_\_\_\_\_ April 20, 2000