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

ORDER MO-1456

Appeal MA-000260-1

The New City of Hamilton

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NATURE OF THE APPEAL:

This is an appeal under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) from a decision of the City of Hamilton/Regional Municipality of Hamilton-Wentworth (now the New City of Hamilton) (the City). The requester (now the appellant) sought access to "an electronic copy of the city and region's tax roll for the current taxation year [2000]", including "records that outline the record layout of the database file(s), the file format (eg ASCII, dBase, Access, spreadsheet, other) and translations for all codes used within the field... [and] a paper printout of the first 50 records".

The City denied access to the tax roll database (the database) relying on section 15 of the *Act* (information published or available), and on its agreement with the Ontario Property Assessment Corporation not to release the database.

The appellant appealed the City's decision.

During mediation, the City agreed to provide the appellant access to four data fields (roll number, assessment amount, tax classes, and property address) in a listing of residential and non-residential properties found on the database. The City charged the appellant a $260 fee which consisted of $240 for labour costs, and $20 for two computer disks.

The appellant paid the requested fee, but appealed the amount.

After reviewing its costs, the City adjusted the fee to $177.50 which included reduced labour costs of $157.50 and the same product cost of $20. The City has not refunded the $82.50 adjustment to the appellant.

The appellant appealed the fee of $177.50.

DISCUSSION:

FEES

Introduction

The charging of fees is authorized in section 45 of the *Act*, and more specific provisions regarding fees are found in section 6 of Regulation 823 made under the *Act*. Section 45 states:

> 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;
>
> (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 of Regulation 823 provides that:

> 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.

Table 1 summarizes the original fees (Fee 1) and the revised fees (Fee 2) charged by the City. In its revised fee, the City reduced labour costs by i) decreasing the hourly rate from $60 to $30 for items 1, 4, and 5, and ii) by eliminating item 6. The hourly rate for items 2 and 3 remained at $60.

Table 1 - Comparison of the Fees Charged by the City

	Task	Time (Hours)	Cost 1 (Hourly)	Fee 1	Cost 2 (Hourly)	Fee 2
1	Review request with tax department; Analyse database to determine appropriate table; Plan process	0.75	***$60***	$45	***$30***	$22.50
2	Develop 5 queries to separate residential and non-residential tax classes; Execute and verify results with tax system:	1	$60	$60	$60	$60
3	Develop 6 queries to summarise residential and non-residential properties; Total assessments; Verify results with tax system; Split residential file by wards due to size constraint	1	$60	$60	$60	$60
4	Review results with IT analyst	0.25	***$60***	$15	***$30***	$7.50
5	Review results with tax department	0.25	***$60***	$15	***$30***	$7.50
6	Total processing time (testing and production)	0.75	***$60***	$45	***nil***	nil
	TOTAL LABOUR COST	4.0		**$240**		**$157.50**
	TOTAL PRODUCT COST (2 computer disks)			$ 20		$ 20
	TOTAL FEE			**$260**		**$177.50**

In this appeal, the City has charged a fee to "review results with IT analyst" (task 4) and "review results with tax department" (task 5). Previous orders have found that the time for reviewing records for release is not an allowable charge under the *Act* (Orders 4 and M-376). Since the records in this appeal are electronic, the "results" described in the tasks refer to the computer records generated by a search of the database. Accordingly, I find that the fees for tasks 4 and 5 are not allowable. Similarly, I find that the activity under tasks 2 and 3 to "verify results with tax system" constitutes a review of the records and therefore is also not chargeable.

The City has charged to "review request with tax department" (part of task 1). The original access request was for all tax roll information for a given year, while the final access agreement provided for much less information. It would appear that the review of the access request with the tax department resulted in the severance of multiple data fields from the records. Previous

orders have found that making suggestions with respect to possible severances are not chargeable, but are considered part of an institution's general responsibilities under the *Act* (Order P-1536). Accordingly, I find that the fee for this activity is not chargeable. Under task 1 there are three separate activities described, but no breakdown of the time allotted to each activity. Given that each activity appears to be equally demanding, I find that each took an equal amount of time and accordingly, the fee for task 1 will be reduced by one-third.

Institutions are permitted to charge fees for preparing records for disclosure. In Order M-1083, Adjudicator Holly Big Canoe stated:

> In the circumstances of this appeal, time spent by a person running reports from the personnel system would fall within the meaning of "preparing the record for disclosure" under section 45(1)(b) and, therefore, the rate of $7.50 per 15 minutes established under section 6.4 of the Regulation may be charged. It should be noted, however, that the Board can only charge for the amount of time spent by any person on activities required to generate the reports. The Board cannot charge for the time spent by the computer to compile the data, print the information or for the use of material and/or equipment involved in the process of generating the record.

I accept the reasoning in Order M-1083 and, accepting it here, I find that the following activities are "activities required to generate the reports" and therefore allowable under the *Act*:

- task 1: analyse database to determine appropriate table; plan process
- task 2: develop 5 queries to separate residential and non-residential tax classes
- task 3: develop 6 queries to summarise [sic] residential and non-residential properties; split residential file by wards due to size constraint

Further, as this order did not allow as a chargeable expense " time spent by the computer to compile the data", I find that the activity in task 2 "execute [search]" is not chargeable.

Process used by the City

The appellant submits that the City in providing the records pursued a needlessly time-consuming process. He states:

> Finance staff undertook work that was unnecessary as at no time did I make a request for the information to be separated into separate residential and non-residential categories.
>
> … I should not be charged for work that was not requested, that I was not advised of, and which was not required.

He further submits that the City agreed to provide "a property listing of residential and non-residential properties (notice the use of the singular, implying one list containing both types of

properties)." He also questioned the City's use of the Microsoft Excel format in providing the record because of the size limits of its files. He indicates:

> … finance staff had to write further queries to divide up the data into Excel-friendly chunks.
>
> … I should not be charged for extra work required by the city's decision to provide records in a format I did not request and which I repeatedly questioned.

The City, in its reply representations, states that the listing was split into four files due to the volume of records involved. It further maintains that

> … the records are a listing of residential and non-residential properties. It is a listing contained in four files. At no time did the writer indicate to either the appellant or the mediator that the responsive records would be contained in one Excel file.

The City also indicates that the time taken to convert the file(s) into Microsoft Excel format was 10 minutes and was included in the 0.75 hours that the City initially charged for processing time. However, the City later eliminated this fee.

I am satisfied that the parties had an agreement that the City would provide the appellant access to four data fields in a listing of residential and non-residential properties within a Microsoft Excel format. This was a verbal agreement that was negotiated through a mediator by means of telephone calls and not discussed directly between the parties. From the appellant's point of view, there was a misunderstanding whether the City should have taken the time to separate the two types of properties and whether use of an Excel format was appropriate. Given that the agreement was not negotiated directly between the parties but through a mediator, and that the agreement did not include specific details as to how the information was to be provided, I find that neither party is at fault for any misunderstanding that may have arisen. Without direction, it was not unreasonable for the City to provide the information in the way that it did. I am also satisfied that even if use of the Excel format resulted in additional or unnecessary costs, the appellant was not charged for converting the files into an Excel format.

Computer Programming

Unlike records in a paper format, the records in this appeal are stored electronically. As a result, a manual search for the records was not required since all the requested information is located in one database. However, to prepare the records for disclosure, the City had to extract the relevant information from the database, and create a new record with that information. Since the database contained information other than what was requested, the City had to find a way to extract what was relevant. The City has charged on the basis of its having developed a computer program to extract the information. The appellant, in his submissions, claimed that the City was not entitled

to levy fees at the rate chargeable for computer programming since it did not develop a computer program, but "simply used standard features of its database system". He submits:

> Why do I argue that what the city did not constitute programming? Queries, universally written in variants of structured query language (SQL), are a standard component of all database programs. They are part of the base functionality of such systems, part of using the program rather than programs unto themselves. You write a query and the database produces the result. It's that simple.
>
> An experienced user can write even a complex query in less than a minute. Even the most complex database queries involve at most four or five short lines, each no more than four or five words long and are rigidly predictable in their structure. They are simple commands, not programs. Further, while SQL is powerful at extracting data from data tables, it cannot be used to do anything else. True programming, on the other hands (sic), involves the use of complex programming languages that can be used to perform just about any computer task. Unlike queries, computer programs stand on their own and most often are compiled to run directly under the operating system.
>
> Put another way, queries are more akin to the old MDOS command prompts that were required on PCs before the advent of Microsoft Windows. Nobody would see that as programming and neither are queries.

In its reply, the City states:

> There is no difference in the process of developing a multi-functional COBOL program to read and extract complex Oracle database records as opposed to developing multiple single function queries programs in SQL and Access to read and extract the same database records and provide the same results. Both approaches require the programmer to intellectually develop a process, to apply technical skills to utilize a tool (develop and test code) and to execute the program and verify the results. The end results are the same; the time the programmer used in the process is less as a result of the power of the tools. Section 6(5) contemplates the development of a customized program in order to produce a new record. In the City's opinion, this is exactly what our process included.
>
> The appellant suggests that the process the City utilized should rightly fall under section 6(6) of the *Act*, "locating, retrieving, processing and copying a record". The process utilized to meet this request obviously involved some of these actions, but was more complex. The process required the creation of new records due to the multiple combination of tax classes and the confidentiality of the information contained in the database records.

A computer program and a database query are similar in that each is a set of instructions in programming code telling the computer to do something. However, as a general rule, a

computer program is capable of very complex procedures while a query utilizes simple commands. The development of a computer program is a complicated process utilizing high-level computer language, while the development of a query is comparatively straightforward. In this appeal, the City had to extract four data fields from a larger database.

The City used the word "query" and not "computer program" to describe the activity it undertook to extract the responsive information from the database. Although the language used is not determinative of the activity, I am satisfied that the work undertaken by the City is more like the development of a query than a computer program.

The City submits that "the end results are the same" whether you use a computer program or a query. Although this may be true, it is a question of choosing the right tool for the job. In the same way that a farmer would not use a backhoe where a shovel would do, a programmer would not develop a computer program where a database query would work. If a programmer chooses the more difficult and expensive approach, it would not be reasonable to pass on these higher costs when a more cost effective method would have sufficed. Accordingly, I find that the City can charge at the rate allowed for preparing a record for disclosure and not at the rate to develop a computer program. The hourly cost for tasks 2 and 3 will therefore be reduced from $60 to $30.

In summary, I find that the following tasks are allowable charges under the *Act*:

Table 2 - Allowable Charges

	Task	Time (Hours)	Cost (Hourly)	Fee
1	Analyse database to determine appropriate table; Plan process	0.5	$30	$15
2	Develop 5 queries to separate residential and non-residential tax classes	0.5	$30	$15
3	Develop 6 queries to summarise residential and non-residential properties; Total assessments; Split residential file by wards due to size constraint	0.75	$30	$22.50
	TOTAL LABOUR COST	1.75	$30	$52.50
	TOTAL PRODUCT COST (2 computer disks)			$20.00
	TOTAL FEE			$72.50

ORDER:

I do not uphold the City's fee decision and I order the City to issue a refund to the appellant in the amount of $187.50.

Original Signed By: July 19, 2001
Dawn Maruno
Adjudicator