



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER MO-1630

Appeal MA-020081-2

The Regional Municipality of Niagara



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/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Regional Municipality of Niagara (the Region) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to:

- All records which identify any special, exclusivity arrangements between the Niagara (sic) and [a named company] for the procurement of products distributed by [the company].
- This would include all correspondence between Niagara and its various consultants for construction and engineering projects were (sic) these products are used or exclusively specified.
- Records that should be considered included are also submission by alternative suppliers addressing their inability to supply (a) Niagara project due to the Proprietary Specifications used in tenders.
- The period of time involved last 10 years and to date.

The Region initially indicated that the request was “frivolous and vexatious” within the meaning of section 4(1)(b) of the *Act*. In Order MO-1575, I did not uphold the Region’s characterization of the request as being frivolous and vexatious and ordered the Region to provide the appellant with a decision letter respecting access to the responsive records.

The Region responded by providing the appellant with a fee estimate pursuant to section 45(3) of the *Act*. The fee was broken down as follows:

- 367 hours to manually search for responsive records for a cost of \$11,010.00;
- 16 hours to prepare the records for disclosure for a cost of \$480.00;
- photocopies of 100 pages of records (estimated) for a cost of \$20.00; and
- goods and services tax of \$805.70

for a total fee estimate of \$12,315.70.

The Region requested the payment of 50% of the estimated fee or \$6,157.85. The requester, now the appellant, appealed the fee estimate. As mediation of this appeal was not possible, it was moved to the adjudication stage of the process. I initially provided a Notice of Inquiry to the Region setting out the facts and issues in this appeal. The Region submitted representations in response to the Notice which were shared, in their entirety, with the appellant. I received submissions from the appellant and shared them with the Region, which then made further representations by way of reply.

DISCUSSION:

The sole issue for determination in this appeal is whether the Region’s fee estimate of \$12,315.70 ought to be upheld.

FEE ESTIMATE

Introduction

The IPC may review the amount of fee, and may uphold the decision or vary it.

Section 45(1) of the *Act* requires an institution to charge fees for requests under the *Act*. That section reads:

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.

More specific provisions regarding fees are found in sections 6, 7 and 9 of Regulation 823 under the *Act*. Those sections read:

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:
 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.

O. Reg. 517/90, s. 6; O. Reg. 22/96, s. 2, part.

- 7.(1) If a head gives a person an estimate of an amount payable under the Act and the estimate is \$100 or more, the head may require the person to pay a deposit equal to 50 per cent of the estimate before the head takes any further steps to respond to the request. O. Reg. 517/90, s. 7(1); O. Reg. 22/96, s. 3.
- (2) A head shall refund any amount paid under Subsection (1) that is subsequently waived. O. Reg. 517/90, s. 7(2).
9. If a person is required to pay a fee for access to a record, the head may require the person to do so before giving the person access to the record. O. Reg. 517/90, s. 9.

The Region's Representations

Search Time

The Region begins its submissions by pointing out that the request is “very broad and very general in nature” and that it covers records accumulated over a ten-year period. In responding to the request, the Regional Clerk “sought out information as to the nature of business conducted by [the named company].” Staff at the Public Works Department advised that the company “is a seller and/or reseller of products associated with water and wastewater treatment plants. Products include but are not limited to submersible pumps, mixers, controllers, etc of various size and capacity.”

The Region indicates that, in order to properly respond to the request, it must review every Water and Wastewater construction file for the past ten years. It states that, following a review of its records, it has determined that over the past ten years between six and twenty-one such projects were undertaken each year. The Region submits that the searches required to locate the specific records sought by the appellant require an in-depth review of each of the construction files.

The Region further submits that construction files for the years 2001 and 2002 are located in its headquarters building. These files could be located without the requirement of a search. The files for the years 1998, 1999 and 2000 (with some exceptions) are housed in its inactive storage facility and would require some fourteen hours of search time to locate. The Region also states that the files for the years prior to 1998 are located in the facilities themselves or in the offices of supervisory personnel.

The Region indicates that:

In order to prepare a list of project files will require a review of financial/budget records requiring a further 35-50 hours to compile a list of such projects. We estimate a further 50 hours to search for and locate files and to return them to this

office for review. Given that expenditure of resources we [have] not yet reviewed the files. Resources required to this point are estimated to be between 99 and 114 hours.

The Region goes on to provide an estimate of the time required to conduct the required searches of the individual project files as follows:

A typical project file is 4-6 inches thick and contains approximately 250 pages. We used an average time of 1.25 hours per file and developed a reasonable 'guesstimate' of 138 project files spanning 10 years (an average between the lowest [60] and the highest [210] possible files. Resources required are estimated at 172 hours.

The Region goes on to point out that it is reasonably likely that additional submersible pumps and other equipment supplied by the company have been purchased by it outside the context of a construction project as a result of failure of a component or simple replacement of old equipment. It indicates that it would be required to conduct a search of all purchase requisitions over the past ten years in order to determine whether such purchases have been made. It estimates that this search would require ten hours per year for a total of 100 hours.

It summarizes its calculation of search time as follows:

- | | |
|---|--------------|
| 1. search for, collect and return project files to Clerk's office | 99-114 hours |
| 2. review above files and mark for copying | 172 hours |
| 3. review purchase orders and operational files | 100 hours |

Total Estimated Hours **371 – 386 hours**

The Region submits that it has established a figure of 367 hours for the search time required.

Preparation Time

The Region suggests that it is unknown at this point in time if responsive records exist at all. However, it has estimated that, if such records exist, "they may result in 5-10 pages at various intervals in any file, requiring 0.5 hours to 1.0 hours to prepare for disclosure." It further estimates that no more than 20% of the files to be searched would contain responsive records and that some 16 hours of time would be required to physically prepare the records for disclosure.

The Region also recognizes that the charging of Goods and Services Tax is not appropriate when responding to a request under the *Act* and has withdrawn this component of the original fee estimate provided to the appellant.

The Region summarizes its submissions as follows:

. . . in preparing these estimates [the Regional Clerk] consulted with the former Freedom of Information Co-ordinator, the Director of Water and Wastewater

Services, the Manager of Purchasing and Payables, the Director of Operational Support Services and the Administrative Assistant to the Corporate Services Department. We also sought advice from supervisory field personnel whose responsibilities include operation and maintenance of water and wastewater assets.

The Appellant's Representations

The appellant acknowledges that his request as originally drafted was extremely broadly worded. He suggests, however, that he attempted to narrow the scope of the request in a memoranda provided to the Region on November 17, 2002. He argues that this narrowed request would require less-extensive searches which could be performed at a fraction of the cost. The narrowed request referred to is a series of questions which the appellant submitted seeking the responses of several named individuals who are employees of the Region.

The appellant goes on to suggest that the Region is not cooperating as it refuses to process this request in its amended form. He argues that the Region is simply trying to create an inflated fee in order to avoid providing him with the information he is seeking at a lesser cost.

The Region's Reply Submissions

Following its review of the representations of the appellant, the Region responded by pointing out that regardless of how the request was framed, the searches outlined in its original submissions would still be required in order to locate the records sought by the appellant. It also suggests that the appellant has put forward an alternative search strategy which would not necessarily yield the documents which he is seeking.

Findings

As originally framed, the request which forms the basis for this appeal is extremely broadly drafted and would require a great deal of time and effort to comprehensively respond to. I agree with the position taken by the Region that, in order to locate all of the records requested, it would be required to undertake a search of each and every one of its water and wastewater construction files for each project completed over the past ten years. I further find that in order to ensure that all possible responsive records are located, the Region would be required to conduct a page-by-page search of the contents of each of these water and wastewater construction project files. This would entail a lengthy and expensive search.

Following the receipt of the Region's decision letter, the appellant attempted to narrow the scope of the request by posing a number of questions which he wanted answered by three officials with the Region. In my view, in order to ensure that the questions were answered in a comprehensive manner, the searches indicated in the Region's decision letter and representations would still be required. The documents sought by the appellant are located in these construction project files and the only way they can be identified is if they are individually searched.

I do not, however, accept many of the search charges put forward by the Region. In my view, the Region is entitled to be compensated for the time required to actually locate the 60 to 210 water and wastewater construction project files for the past ten years. It indicates that the 2001 and 2002 files "can be produced in a fairly forthright manner" as they are located in the Region's present headquarters. Accordingly, I do not allow a fee for any time required to search for these files. It also indicates that it would be required to expend 14 hours in conducting its searches for files relating to projects undertaken in 1998, 1999 and 2000. I accept that this is a reasonable amount of time to conduct these searches and allow that portion of the fee. The Region has not, however, provided me with a sufficient basis to uphold a charge for search time of its pre-1998 record-holdings. It indicates that these records are located in the facilities themselves or with the record-holdings of "supervisory personnel" but has not provided any details as to how much time is required to locate these files. Accordingly, I find that I am unable to allow an amount for the searches required to locate the pre-1998 construction project files relating to water and wastewater undertakings. I find that the Region is entitled to charge a fee only for the 14 hours spent locating the construction project files for the years 1998, 1999 and 2000.

The Region has also put forward a claim for 35-50 hours, described as the time required "to prepare a list of project files" following a "review of financial/budget information". In addition, the Region has claimed an additional 50 hours "to search for and locate files and to return them to this office for review". It has not been made clear to me exactly what searches these charges relate to. I do not agree that time is required to "prepare a list of project files". In my view, the search time allowed above is sufficient to enable the Region's staff to locate and identify the requested construction project files. I find that there is no need to go to the expense of creating a list of projects and then undertaking a search for the files relating to them. I do not allow these charges, therefore.

I find that the time claimed by the Region to conduct the searches of the 60 to 120 construction project files is reasonable, given the complexity and volume of records to be searched. I will, accordingly, uphold the Region's "guesstimate" of 138 project files for a total of 172 hours. I find this to be a reasonable estimate of the time required to examine each of the files and determine if they contain responsive records.

I also uphold the Region's estimate with respect to its search of purchase requisitions. In my view, it is reasonable that searches of "all purchase requisitions issued by supervisors and managers of plants and systems over the past ten years" would require 100 hours of search time. While I have not been provided with information as to how many such purchase requisitions are created in a given year, I accept that the search time claimed by the Region is a reasonable amount given the number of years and the breadth of the possible responsive records.

I have carefully reviewed the Region's submissions with respect to the time required to prepare the records for disclosure. I am unclear as to exactly what the claimed "preparation time" entails as the Region has not indicated that the records would require severing. I do not, accordingly, allow the 16 hours charged for this activity.

In addition, the Region is entitled to charge for its photocopying expenses of the records which are ultimately located and disclosed to the appellant. The fee of \$0.20 per page is set out in

section 6 of Regulation 823 and will be ascertained more precisely if and when the searches have been undertaken.

In summary, I uphold the Region's charge for search time of up to 286 hours for a total of \$8,580.00 plus an unascertained amount for photocopying charges to be determined once the searches have been conducted.

ORDER:

1. I do not uphold the Region's fee estimate of \$12,315.70.
2. I uphold the Region's entitlement to charge a fee of up to \$8,580.00 for the conduct of its searches for responsive records, plus unascertained photocopying charges of \$0.20 per page to be calculated following the completion of the searches required.

Original signed by:
Donald Hale
Adjudicator

April 4, 2003