



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1628

Appeal MA-010306-2

The Regional Municipality of Niagara



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NATURE OF THE APPEAL:

The requester, now the appellant, filed a request with the Regional Municipality of Niagara (the Region) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records:

Concerning the Port Weller WPCP Upgrades Contract #98-35...documents concerning the construction schedule which followed the award of contract to [a named construction company], described as follows:

1. All schedules and each revised schedule submitted by [the company] and also those produced by [a consulting firm] or Niagara, if any, that followed the initial schedule submitted as part of the tender process;
2. Any correspondence exchanged with [the company] addressing the schedule, changes to the schedule and revisions to the schedule.

The Region issued a decision letter denying access on the basis that the request was frivolous and vexatious within the meaning of section 4(1)(b) of the *Act*. The appellant appealed this decision and I issued Order MO-1548 in which I determined that section 4(1)(b) had no application in the circumstances. Accordingly, I ordered the Region to provide the appellant with a decision letter.

The Region provided the appellant with a fee estimate in the amount of \$1,050.00 representing 35 hours of search time plus photocopy costs which can only be ascertained once the searches have been undertaken and the responsive record identified. The Region indicated to the appellant that he may view the documents to be disclosed rather than photocopy them.

Mediation of the appeal was unsuccessful and the matter was moved to the adjudication stage of the process. I sought the representations of the Region initially, as it bears the onus of demonstrating that the fee estimate provided is reasonable. The Region made representations in response to the Notice, which were shared, in their entirety, with the appellant. I then invited the appellant to respond to the issues addressed in this Notice and in the representations of the Region. The appellant also made submissions, which were in turn shared with the Region. This stage of the appeal concluded with the submission of additional representations by the Region.

DISCUSSION:

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 Parties' Representations

The Region submits that upon receiving the request, its Freedom of Information Coordinator (the Coordinator) examined the records containing the responsive records and, in consultation with the Public Works Department staff "responsible for compiling the file" determined that it would require five working days, or 35 hours, to search the files and prepare the records for disclosure. In the course of its discussions with the appellant, the Region advised him of this estimate, along with an approximate fee of \$300.00 for photocopying.

Specifically, the Region indicates that the responsive records are located in three separate departments (the office of the Director of Legal Services, the Project Manager's Office and the Public Works Department) and comprise some two cubic feet of paper. The Coordinator examined one of the pertinent files and extracted 64 pages of responsive records, which required 2.5 hours. The Region indicates that there are 10 such files in its record-holdings and that additional time would be required to prepare the records for disclosure. The Region does not, however, provide any basis upon which this estimate of time for the preparation of the records was determined.

The appellant takes the position that the records have already been assembled as a result of a legal action which he initiated against the Region. He argues that the search time required to locate the requested documents has already been incurred by the Region in responding to his lawsuit. He suggests that the records he is seeking are in fact already compiled in the office of the Director of Legal Services and that additional searches of the record-holdings of the Project Manager and Public Works Department are, accordingly, unnecessary.

In its reply representations, the Region indicates that at no time was a complete search for the records which are responsive to this request undertaken. The Region reiterates that the records are located in three separate areas, one of which is the office of the Director of Legal Services. It emphasizes that, contrary to the assertion of the appellant, not all of the responsive records are with the Director. Rather, it submits that only those records relating to the contracts prepared with respect to this construction project are located in this individual's office. Other responsive records remain with the Project Manager (at the facility where the construction work was done) and the Public Works Department. It again indicates that the fee estimate provided was based on the review undertaken by the Coordinator of just one representative file containing responsive records compiled by the Public Works Department.

Findings

I accept the submissions of the Region that it will require 2.5 hours to review each of the ten files which contain responsive records. Accordingly, I am prepared to uphold its decision with respect to search time in the amount of 25 hours (2.5 hours X 10 files) or \$750.00. I find that the responsive records are not located exclusively in the record-holdings of the Director of Legal Services, as was asserted by the appellant.

I also find that the Region has not provided sufficient evidence for me to uphold its fee estimate with respect to the time allocated for the preparation of the records for disclosure. The Region has not indicated whether it requires this time in order to sever the records or that it has claimed the application of any of the exemptions in the *Act* to the documents, in whole or in part. I further note that the Region appears to have informed the appellant that he could view the records in person in order to determine which documents he was interested in. This indicates to me that the Region would not require additional time to sever or otherwise segregate the records sought by the appellant. As a result, I find that I am unable to uphold the Region's fee estimate with respect to the time required to "prepare the records for disclosure".

I uphold the Region's decision with respect to its photocopying charges. The quantum of this portion of the fee must remain undetermined until such time as the searches are undertaken and the records are compiled. I am prepared to allow the Region \$.20 per page, as mandated by section 6 of Regulation 823, for the recovery of its photocopying costs.

In summary, I uphold the Region's fee estimate in the amount of \$750.00 plus an unascertained amount for photocopying to be determined once the searches required have been undertaken.

ORDER:

1. I uphold the Region's fee estimate of \$750.00 plus photocopying charges of \$.20 per page to be calculated following the completion of the searches required.
2. I do not uphold the Region's fee estimate of \$300.00 for preparation time.

Original Signed By: _____

Donald Hale
Adjudicator

March 25, 2003