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

ORDER MO-2102

Appeal MA-050191-1

City of Ottawa

Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9188
TTY: 416-325-7539
http://www.ipc.on.ca

NATURE OF THE APPEAL:

The City of Ottawa (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for any records maintained by three named City officials concerning:

1. All printed papers (contents of staff's focused working files only) on complaints, surveys, activities and actions, responses; communications etc. related to illegal motor vehicle parking in the Mackenzie King Bridge bike lanes since 2001
2. All email messages on this issue that are in unified or relatively focused collections (e.g. together in folders, and possibly as part of a somewhat larger set of messages that may be related in someway)

In his request, the requester specified that he was seeking access to electronic copies of email records and an opportunity to view original paper documents.

The City provided the requester with an interim decision letter in which it was estimated that sixteen hours of search time, one hour of preparation and three hundred and fifty photocopies were required. The total of the fee estimate was $280.00. The City requested that the requester pay a deposit equal to fifty per cent of the estimated fee. The requester responded to this letter by asking for a fee waiver pursuant to section 45(4)(c) on the basis that dissemination of the record will benefit public health or safety.

The City sent the requester a final decision letter, providing partial access to the records, citing the application of sections 11(d) (information whose disclosure could reasonably be expected to be injurious to the financial interests of an institution) and 14(1) (invasion of personal privacy), read with section 14(3)(a) (medical history). In this letter, the City did not address the issue of fee waiver, but did charge a reduced search fee. The fee charged in this letter was for the amount of $236.40 (comprised of $180.00 for search time, $15.00 for preparation and $41.40 for photocopying). Of this amount, the appellant paid the sum of $140.00 ($90.00 towards search time, $35.00 towards photocopying and $15.00 for preparation). The requester again requested a waiver of the entire $236.40 fee, and the City denied this request.

The requester, now the appellant, appealed this decision and sought reimbursement of the $140.00 which he had paid to the City.

During the mediation stage the appellant agreed to remove the severed records from the scope of the appeal. Therefore, the application of the sections 11(d) and 14(1) exemptions are no longer at issue. The appellant also removed the photocopying costs ($41.40) and the record preparation costs ($15.00) from the scope of the appeal. These fees are, therefore, no longer at issue. The appellant stated that he would like the balance of the fee ($180.00 for search time) and the denial of his request for a fee waiver to be adjudicated on the grounds that it is in the public interest that this information be disclosed at no cost. Regarding the $180.00 search fee, since the appellant has paid the sum of $90.00, if he is successful in his appeal he would be entitled to receive a refund of $90.00 and a waiver of the $90.00 outstanding balance.

Mediation did not resolve the appeal and the matter moved to the adjudication stage.

Representations were sought and received from the City. A complete copy of these representations, along with a Notice of Inquiry, was sent to the appellant seeking his representations. The appellant provided representations in response. The City was then asked to provide representations by way of reply to the questions raised by the appellant in his representations. The appellant then provided additional sur-reply representations in response to those of the City.

DISCUSSION:

FEES

General principles

Where the fee exceeds $25.00, an institution must provide the requester with a fee estimate. The City therefore provided the appellant with a $180.00 search fee estimate.

A fee estimate greater than $100.00, may be based on either

- the actual work done by the institution to respond to the request, or
- a review of a representative sample of the records and/or the advice of an individual who is familiar with the type and content of the records [MO-1699].

The purpose of a fee estimate is to give the requester sufficient information to make an informed decision on whether or not to pay the fee and pursue access [Orders P-81, MO-1367, MO-1479, MO-1614, MO-1699].

The fee estimate also assists requesters to decide whether to narrow the scope of a request in order to reduce the fees [Order MO-1520-I].

In all cases, the institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated [Order P-81, MO-1614].

This office may review an institution's fee and determine whether it complies with the fee provisions in the *Act* and Regulation 460, as set out below.

Section 45(1) 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.

Other relevant provisions regarding fees are found in sections 7 and 9 of Regulation 823. Those sections read:

7. (1) If a head gives a person an estimate of an amount payable under the *Act* and the estimate is $100.00 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.

(2) A head shall refund any amount paid under subsection (1) that is subsequently waived.

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.

Representations of the Parties

In its initial representations, the City states:

The requested information involved a four-year time period. Three City employees had records pertaining to this issue; the Manager of Mobility and Area Traffic Management, the Coordinator of Cycling Facilities, and the Program Manager of Transportation Demand Management, Cycling and Pedestrian Facilities. The City submits that the search was completed by employees who have knowledge of the subject matter, are familiar with the records, and who all have a minimum of three years experience in their position. [Order PO-2310]

The City searched through on-site and off-site files as well as emails. City staff searched and reviewed eight (8) files located on-site, fifteen (15) files located off site, and over six hundred and fifty (650) emails. The total number of pages reviewed equaled approximately 1400 pages. Twelve (12) hours of actual time was spent searching emails and files: six (6) hours each for emails and for files. The City submits that based on the experience of employees and

> the number of files searched, a total of six (6) hours charged for search time, given that it represented over 1400 pages, is reasonable. [Order PO-2310]
>
> In the recent Order PO-1834, the Information and Privacy Commissioner (hereinafter referred to as the "IPC") held that one minute per page was a reasonable estimate for search time. In this instance, the City took twelve (12) hours to review over 1400 pages, equivalent to approximately 0.51 minutes per page. However, the requester was only charged for six (6) hours of search time, equivalent to approximately .26 minutes per page. Accordingly, it is submitted that the City's search time is reasonable.

The appellant's request was for electronic copies of email records and to view original paper documents of records held by three named person, who held the following positions:

- the Program Manager of Transportation Demand Management, Cycling and Pedestrian Facilities
- the Coordinator of Cycling Facilities
- the Manager of Mobility and Area Traffic Management

The appellant sought the following information:

1. All printed papers (contents of staff s focused working files only) on complaints, surveys, activities and actions, responses; communications etc. related to illegal motor vehicle parking in the Mackenzie King Bridge bike lanes since 2001
2. All email messages on this issue that are in unified or relatively focused collections (e.g. together in folders, and possibly as part of a somewhat larger set of messages that may be related in someway)

The appellant stated in his original request that he was willing to discuss clarifications and refinement of his request that would aid in identifying the requested records in the most cost-effective and efficient matter to both the appellant and the City of Ottawa.

The appellant submits that:

> …by searching off-site, the City ignored the original request for records and went beyond the scope of the original, narrowly-stated request for records that would be convenient, and relatively inexpensive to access. The appellant was not advised of this enlarged search, nor contacted with suggestions on how to constructively narrow the scope of the request, despite such an offer being clearly stated in the original request letter. The appellant therefore had no basis to know that the original request was not being followed. On this basis, the City's "boilerplate" interim decision letter and cost estimate, without full explanation, was misleading.

> The appellant submits that while the search fee may be representative of work undertaken by the City and the records were prepared and provided in a cordial and professional manner, that the work not responsive to the request, and therefore the City's fee should not be upheld.

The City responded to the appellant's submissions as follows:

> The City submits that its search was responsive to the request. The City searched records as maintained by [the three named City officials] as indicated in the request. The statements provided in … the City's representations indicate that the search was conducted by these same City staff persons specified in the request. Therefore, the City's search was not beyond the scope of the request. In addition, the City submits that searching the off-site files was responsive to the request since the request specified all printed papers and communications (etc.) since 2001. In order to properly respond to the request, the City had an obligation to search off-site files, which contained documents dating from 2001 as maintained by the three specified staff persons noted above. The City's search of on-site and off-site files is responsive to the request. Accordingly, the search conducted was not beyond the scope of the original request.

In response, the appellant submitted that:

> The City provided records that are unresponsive to the original request and therefore the fee should not be upheld. As stated in issue a) of the appellant's original response, the original request was for "*All printed papers* ***(contents of staff's focused working files only)".*** A reasonable person would not consider "off-site files" as being the same as "working files only" and the City was therefore unresponsive to the request…
>
> The City's response to the appellant's original request for "*All email messages on this issue*…" was not responsive when provided in paper form instead of the original and less expensive and more useful electronic compilation.
>
> Even if the provided records were affordable by the requester, they went beyond the scope of the original request, and the City did not provide any notification to the requester that this was the case. By this action, the fee estimate did not assist the appellant in narrowing the scope of the request in order to reduce the fees [Order MO-1520-I].
>
> The appellant submits that any institution can effectively prevent the disclosure of information that should be readily available under the *Act* by flooding a requester with information that goes beyond an original request or a reasonable person's understanding of a request, or searches for records that are

> more expensive to access offsite or in archives. Such a response can make a request unaffordable, leading to undesired, forced withdrawal by the requester.

Analysis/Findings

As stated above, the purpose of a fee estimate is to provide the requester with sufficient information to make an informed decision on whether or not to pay the fee and pursue access to the requested records. In the current appeal, the City's fee was based on actual work done to respond to the appellant's request. The City provided the appellant with a search fee of 12 hours and required that the appellant pay one-half of the search fee.

The appellant takes issue with the City's search off-site in response to the appellant's request. He maintains that his request for the contents of "staff's focused working files only" should have been responded to by the City as a request for on-site files only. However I note that the appellant's request was for these files covering a four-year period, starting in 2001. It is not unreasonable for these files to be located off-site. I do not agree with the appellant, based on the wording of his request, that the scope of the search undertaken by the City should have been restricted to on-site files only. Nor do I agree with the appellant that the City should have sought clarification of his request before undertaking the search. Based on the wording of the request, the representations of the parties and the search undertaken in response, I find that the appellant's request was sufficiently clear to allow the City to search for responsive records.

As stated in its representations, City staff searched and reviewed eight files located on-site, fifteen files located off site, and over six hundred and fifty emails. The total number of pages reviewed equalled approximately 1400 pages. Twelve hours of actual time was spent searching emails and files; six hours each for emails and for files. Based on the City's explanation of the steps required to locate the responsive information, I find that 12 hours of search time is reasonable and is responsive to the appellant's request.

The appellant states that the provision of the responsive e-mail messages in paper form, instead of an electronic compilation, was not responsive and too expensive. The appellant has not challenged the photocopy fee. Given the large number of e-mails that had to be reviewed by the City, and having reviewed the representations of both parties, it is neither readily apparent to me, nor have I been provided with evidence to show that providing these emails to the appellant in an electronic compilation would have been more cost effective or less time consuming than the method chosen by the City. Therefore, I find that the search fee charged to the appellant for the provision of paper copies was reasonable.

The appellant was charged for only six hours of search time. Even if I were to accept the appellant's argument that the email records should have been provided in an electronic format, I am not persuaded that the search time for searching through the requested emails would have been accordingly reduced. In any event, the City has only charged the appellant one half of the search time, which in effect is the time to search the paper files.

In conclusion, I am satisfied that the City's search fee of $180.00 is reasonable.

FEE WAIVER

General principles

Section 45(4) of the *Act* requires an institution to waive fees, in whole or in part, in certain circumstances. Section 8 of Regulation 823 sets out additional matters for a head to consider in deciding whether to waive a fee. Those provisions state:

> A head shall waive the payment of all or any part of an amount required to be paid under subsection (1) if, in the head's opinion, it is fair and equitable to do so after considering:
>
> > (a) the extent to which the actual cost of processing, collecting and copying the record varies from the amount of the payment required by subsection (1);
> >
> > (b) whether the payment will cause a financial hardship for the person requesting the record;
> >
> > (c) whether dissemination of the record will benefit public health or safety; and
> >
> > (d) any other matter prescribed by the regulations.
>
> 8. The following are prescribed as matters for a head to consider in deciding whether to waive all or part of a payment required to be made under the Act:
>
> > 1. Whether the person requesting access to the record is given access to it.
> >
> > 2. If the amount of a payment would be $5 or less, whether the amount of the payment is too small to justify requiring payment.

A requester must first ask the institution for a fee waiver, and provide detailed information to support the request, before this office will consider whether a fee waiver should be granted. This office may review the institution's decision to deny a request for a fee waiver, in whole or in part, and may uphold or modify the institution's decision [Orders M-914, P-474, P-1393 and PO-1953-F].

The institution or this office may decide that only a portion of the fee should be waived [Order MO-1243].

Part 1: basis for fee waiver

The appellant relies on the provision in section 45(4)(c) concerning public health or safety to justify the waiver of the fee in this case.

The following factors may be relevant in determining whether dissemination of a record will benefit public health or safety under section 45(4)(c):

- whether the subject matter of the record is a matter of public rather than private interest
- whether the subject matter of the record relates directly to a public health or safety issue
- whether the dissemination of the record would yield a public benefit by
  - (a) disclosing a public health or safety concern, or
  - (b) contributing meaningfully to the development of understanding of an important public health or safety issue
- the probability that the requester will disseminate the contents of the record

[Orders P-2, P-474, PO-1953-F, PO-1962]

This office has found that dissemination of the record will benefit public health or safety under section 45(4)(c) where, for example, the records relate to:

- compliance with air and water discharge standards [Order PO-1909]
- a proposed landfill site [Order M-408]
- a certificate of approval to discharge air emissions into the natural environment at a specified location [Order PO-1688]
- environmental concerns associated with the issue of extending cottage leases in provincial parks [Order PO-1953-I]
- safety of nuclear generating stations [Orders P-1190, PO-1805]
- quality of care and service at group homes [Order PO-1962]

Representations of the Parties

The City submits that:

> The subject matter of the records is not of public interest. The records essentially contain correspondence between City employees relating to possible solutions at a preliminary stage on illegal motor vehicle parking in a bike lane. As a result, the subject matter of the records is not a public interest….
>
> In the Appellant's email dated May 9, 2005 requesting a fee waiver, he submits that dissemination of the records "will help residents to understand what is a reasonable period to, wait for City staff to correct a safety hazard, before elevating it". The test requires one to prove that the records will contribute meaningfully to the development of understanding of a public health or safety issue. The City's appropriate response time does not contribute to the development of understanding a public health or safety issue. [Order PO-2299]
>
> It is submitted that the Appellant his not demonstrated how the dissemination of the records would meaningfully benefit public health or safety. A small group of residents may have an interest in knowing what solutions were considered, but the public's health would not be affected by possessing this knowledge. In Order PO-2299, the IPC denied the fee waiver and stated that regardless if the subject matter of the records related to public health and safety, "dissemination of the specific records (...) would not provide a *discernible* benefit to any public health or safety concern" (emphasis added). It is submitted that the Appellant has not met this burden…
>
> The City concedes that the requester will most likely disseminate the contents of the record. However, it is believed that the dissemination of information will only be to a small segment of residents, or will only affect a small segment of residents.

The appellant is an experienced cycle safety activist. He states in his representations that the records formally document communications of concern from the public about frequent illegal motor vehicle parking on the Mackenzie King Bridge bike lane. This bike lane, according to the appellant, is the primary cycling route and has been formally designated by the City in its Official Plan and Transportation Master Plan. The appellant submits that the records contain the City's response, or lack of response, to this public safety concern during a period of more than three years. He states that:

> …cycling hazards on public roads, and how of the City remedies them, or fails to take action, is of importance to Ottawa residents...
>
> The ongoing public safety hazard is a shared responsibility of illegally behaving motorists, and also of City staff who for more than three years have

> not implemented any corrective action. It is a public safety issue and of direct interest to the public to understand why the City has not made any visible progress… [T]he records provide a better understanding of how current City staff respond to a safety problem that is universally acknowledged by the public and themselves…. [T]he public is well served, both in this specific instance and in the general issue of transportation safety by a better understanding of how City staff are currently responding to an issue, because it allows the public to modify its actions or takes actions that lead to progress on a safety issue… The records document a clear, irrefutable example of how the City has not solved a safety problem that is recognized by both City staff and the public. The records of this example provide a well-documented basis for the public insisting that illegal parking in bike lanes to be dealt with effectively by the new [City] Cycling Plan, because the City is not capable of responding to this public safety issue now.

The appellant has undertaken to publicly disseminate the records as evidence in support of the proposed policy amendments to the proposed City Cycling Plan.

In reply, the City states:

> The responsive documents clearly demonstrate that it is not an "issue of concern to a majority of the Ottawa public", as alleged by the Appellant. The responsive documents contain inquiries from six (6) members of the community since 2001, including the requester. Two of these six inquirers were acting on behalf of an organization, such as the Cycling Advisory Committee and the Citizens for Safe Cycling and Road, and brought their inquiries to a Councilor. Accordingly, the City submits that this does not indicate that the majority of Ottawa citizens are concerned with this issue. In conclusion, the benefits of disseminating the records do not concern the general public, but only concerns a small number of residents.

In his sur-reply representations, the appellant states that:

> …there may be many recorded complaints about this public safety hazard that have been received by the City. The City maintains a database and response tracking system for public queries and complaints received by telephone, email and other methods, however related records in that database were not the subject of this request. The City's representation that inquiries were only received by six (6) members of the community (in the context of the requested records) is irrelevant… [T]he City's own Cycling Advisory Committee raised concerns about this public safety issue over the years, which are recorded in the responsive files… [T]he records contain public safety concerns formally expressed in writing to and by the City Council's

> Cycling Advisory Committee. Therefore, these records are of importance to many cycling residents of Ottawa.

The appellant lists the responsibilities of the Roads and Cycling Advisory Committee as:

- Representing the interests of all cyclists in the City of Ottawa
- Promoting bicycle use as a means of improving the health of Ottawa residents
- Providing advice and guidance on matters pertaining to education on overall road safety and cycling related issues, and the development of policies and programs in accordance with its mandate

The appellant submits that:

> Bicycle and motor vehicle crashes in Ottawa (as elsewhere) are known to occur generally in proportion to the volume of traffic (motor vehicles, pedestrians or cyclists) at a specific hazardous location. The responsive records themselves indicate that this public health and safety issue directly affects more than 300 cyclists per day, which is far higher volume, and risk, than on the vast majority of City streets.

Analysis/Findings

In Order P-474 former Assistant Commissioner Glasberg found that the following factors are relevant in determining whether dissemination of a record will benefit public health or safety under section 57(4)(c) of the provincial *Freedom of Information and Protection of Privacy Act*, which is the equivalent of section 45(4)(c) of the *Act*:

1. Whether the subject matter of the records is a matter of public rather than private interest;
2. Whether the subject matter of the records relates directly to a public health or safety issue;
3. Whether the dissemination of the records would yield a public benefit by a) disclosing a public health or safety concern or b) contributing meaningfully to the development of understanding of an important public health or safety issue; and
4. The probability that the requester will disseminate the contents of the records.

Taking into account the representations of the parties, I find that this test set out in Order P-474 by former Assistant Commissioner Glasberg has been met, as follows:

Requirement 1

The subject matter of the records, the Mackenzie King Bridge bike lanes, has been described by the appellant

> … (as) the primary cycling route formally designated by the City in its Official Plan and transportation Master Plan for travel from the eastern half of the City into downtown. It is part of one of only three bridges that cross the Rideau Canal and provide access to downtown from the east. It is not surprising, therefore, that this bike lane is extensively used by the traveling public, according to the City's own traffic counts. There are but two nearby alternate routes. The route, and the unresolved public safety hazard on the route and why it is unresolved are very much of public interest.

I find that the subject matter of the records is a matter of public rather than private interest, thereby satisfying Requirement 1.

Requirement 2

I also find that the subject matter of the records relates directly to a public safety issue. I agree with the appellant's statement that "Unresolved safety hazards on public roads which affect Ottawa residents are clearly an issue of concern to a majority of the Ottawa public, according to the City's own recent survey"…

The City in its representations concurs that "The majority of the records simply contain information on possible solutions (to the illegal motor vehicle parking) regarding the Mackenzie King Bridge bike lane."

Accordingly, I find that Requirement 2 has been met.

Requirement 3

I further find that the dissemination of the records would yield a public benefit by a) disclosing a public safety concern or b) contributing meaningfully to the development of understanding of an important public safety issue. The appellant's submissions on this point are compelling and state in part, as follows:

> The records document a clear, irrefutable example of how the City has not solved a safety problem that is recognized by both City staff and the public. The records of this example provide a well-documented basis for the public insisting that illegal parking in bike lanes be dealt with effectively by the new Cycling

> Plan, because the City is not capable of responding to this public safety issue now….
>
> The public has a reasonable expectation that a public safety hazard will be corrected within a reasonable amount of time after it has been brought to the attention of City staff who have the responsibility and authority to take action. … [It] is a matter of public interest to understand why this is occurring, especially when constructive and inexpensive solutions have been proposed by residents seeking to solve the problem. The ongoing public safety hazard is a shared responsibility of illegally-behaving motorists, and also of City staff who for more than 3 years have not implemented any corrective action. It is a public safety issue and of direct interest to the public to understand why the City has not made any visible progress.

A review of these records demonstrate that although they may contain only six enquiries from private individuals, these records comprise 202 pages and include numerous emails, diagrams, studies and other documents concerning the illegal parking issue on the Mackenzie King Bridge bike lane. Therefore, I find that dissemination of the records would yield a public benefit, as it would provide the public with a better understanding of how City staff is addressing the identified safety issue of illegal motor vehicle parking on the Mackenzie King Bridge bike lane. I find that dissemination of the records will also provide the cycling community with supportive evidence to make suggestions as to proposed policy amendments to the Cycling Plan. Therefore, I conclude that Requirement 3 has also been satisfied.

Requirement 4

The appellant is a cycle safety advocate and activist and has undertaken to disseminate the contents of the records. In my view, he will, in fact, do so, thereby meeting Requirement 4.

In conclusion, as all four requirements of the test under section 45(4)(c) has been met, I find that dissemination of the records will benefit public safety.

Part 2: fair and equitable

For a fee waiver to be granted under section 45(4), a finding must be made that it is "fair and equitable" in the circumstances to do so. Relevant factors in deciding whether or not a fee waiver is "fair and equitable" may include:

- the manner in which the institution responded to the request;
- whether the institution worked constructively with the requester to narrow and/or clarify the request;

- whether the institution provided any records to the requester free of charge;
- whether the requester worked constructively with the institution to narrow the scope of the request;
- whether the request involves a large number of records;
- whether the requester has advanced a compromise solution which would reduce costs; and
- whether the waiver of the fee would shift an unreasonable burden of the cost from the appellant to the institution.

[Orders M-166, M-408, PO-1953-F]

Representations of the parties

The City states that:

> [It] has responded in good faith to the request and has continuously administered the request in a constructive manner. The City always promptly responded to the Appellant's correspondence and has provided him with the reasons for the fee. The City has consulted with staff to obtain the most accurate calculation of fees. Further, duplicate documents and emails were excluded in order for the appellant to save on preparation time and photocopy fees. The City's search fee was reduced to half the actual time expended. The City submits that it responded to the Appellant's request in an efficient and proficient manner. [Order MO-1285]
>
> The City submits that in the past, the Appellant has been provided with a number of records free of charge, including statistical reports, documents on cycling, and access to Transportation Committee minute recordings. [Orders MO-1895, PO-1909]
>
> The City submits that the appellant did not narrow or clarify his request subsequent to the fee estimate letter. The appellant requested that the City continue to process the request as it was originally stated without any attempt to narrow his request. Also, the City submits that the Appellant did not advance or proposed a compromise solution to reduce the costs…

In reply, the appellant states that:

> The City did not correctly respond to the appellant's original request for copies of records (e.g. Emails) in their original electronic form…

> …had electronic copies of those emails been provided as requested, this work would have been at least partially unnecessary. Duplicates would not have mattered…
>
> …electronic copies of the records are most appropriate for public dissemination, and at minimum, the requester requires paper copies.
>
> It is inequitable that the burden for increasing the public's awareness of public health or safety should be put solely upon requesters, who are often individuals or groups with extremely limited financial resources compared to the institutions whose records me being released for the public benefit. If a public good is found to be served by the release of records by the IPC then respectfully that it is inconsistent and undesirable for the IPC to allocate costs in the current manner.

Analysis/Findings

I found above that the search fee charged was reasonable in the circumstances. In making a finding as to whether waiver of the fee is fair and equitable, I have considered the representations of the parties and the factors listed above, as follows:

- ***the manner in which the institution responded to the request***;

The appellant acknowledges that the City responded to his request in a cordial manner and likely made special effort to reduce printing and duplicate e-mails. However, the appellant takes issue with the provision to him of paper records as opposed to electronic records, as requested. The appellant wanted access to electronic records in order to ease his ability to disseminate these records publicly. The appellant also believes that the provision of electronic records would have saved search time.

I find that the provision of records in paper form to the appellant by the City is a consideration that weighs in favour of granting a fee waiver, as the appellant's request did specifically seek these records in electronic form. I agree with the appellant's argument that he would be able to disseminate the records more easily if he had been provided the records in an electronic form.

- ***whether the institution worked constructively with the requester to narrow and/or clarify the request***;

There was no effort made on the City's part to narrow or clarify the request, despite the wording of the appellant's request, inviting contact for clarification or to render the response to the request more cost-effective. This factor weighs in favour of the appellant.

- ***whether the institution provided any records to the requester free of charge;***

The City did waive half of its fee for search time. Therefore, this factor weighs in favour of the City's position that the remainder of the fee should not be waived.

- ***whether the requester worked constructively with the institution to narrow the scope of the request***;

When the appellant received the initial fee estimate of $280.00, he did not contact the City to attempt to narrow the scope of his request in order to reduce the fee to be charged. However, I note that the fee estimate letter did not ask the appellant to contact the City to attempt to narrow his request in order to lead to a reduced fee. The appellant sought a fee waiver within the 30 day time period to file an appeal from the fee estimate. The appellant also offered in his initial request to discuss clarifications and refinement of the request that would aid in identifying the requested records in the most cost-effective and efficient manner to both the appellant and the City. I find therefore that this factor weighs in favour of the granting of a fee waiver.

- ***whether the request involves a large number of records;***

The request involves searching through a large number of records, approximately 1400 pages and 650 e-mails.

This factor weighs in favour of the City's decision not to grant a fee waiver.

- ***whether the requester has advanced a compromise solution which would reduce costs;***

The appellant offered in his request letter to be contacted in order that his request could be dealt with in a cost-effective manner. This factor weighs in favour of the appellant's arguments in favour of a fee waiver.

- ***whether the waiver of the fee would shift an unreasonable burden of the cost from the appellant***

As stated above, I am satisfied that the appellant will disseminate the records in order to seek to improve a public safety issue in the City. Accordingly, I find that it would place an unreasonable burden for the appellant to bear the cost of the fee in this case. Therefore, this factor weighs in favour of the granting of the requested fee waiver to the appellant.

In conclusion, I find that the factors weighing in favour of a fee waiver outweigh those against doing so. In making this finding, I have taken into consideration the factors set out above.

I find that the entire search fee of $180.00 charged to the appellant should be waived, and the amount of $90.00 paid by the appellant to the City should be refunded to him.

ORDER:

1. I uphold the City's search fee of $180.00.

2. I order the City to waive the search fee of $180.00 and to refund to the appellant the amount of $90.00 already paid by him by no later than **November 18, 2006.**

Original signed by: October 18, 2006
Diane Smith
Adjudicator