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

ORDER MO-2367

Appeal MA07-58

City of Toronto

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 requester filed a number of access requests with the City of Toronto (the City), under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), relating to sign inspection records for various properties in Toronto.

The City has identified the requests that are at issue in this appeal as Request Number 06-4120 and Request Numbers 06-4690 through 06-4868.

Request Number 06-4120

In Request Number 06-4120, the requester sought access to all sign inspection records from the City's Municipal Licensing and Standards Division (MLS), including the entire contents of every folder opened for third party signs, in the South District. The request encompassed all records dated from January 1, 2006 to the date of the request, with the exception of 27 specified properties.

The City provided a fee estimate for this request in the amount of $2,100.00 for 70 hours of search time at $30.00 per hour. In the fee estimate, the City advised the requester that as some of the records might contain personal information, additional fees for severing the records calculated at a rate of two minutes per page and $30.00 per hour, would be charged. The City also advised the requester that a photocopy fee of $0.20 per page would also be charged. Pursuant to Regulation 823, the City requested that the appellant submit a deposit of $1,050.00.

The requester provided the City with a cheque in the amount of $1050.00.

Request Numbers 06-4690 through 06-4868

Subsequently, the requester met with the City's Task Force on third party signs. As a result of that meeting, the requester decided to submit a new request for similar information for specified property addresses. The requester asked the City to place Request Number 06-4120 on hold so that MLS could instead focus on searching for the information detailed in his new request. In the new request, the requester sought access to the entire contents of all folders maintained by MLS at any time pertaining to signs, for approximately 161 specified properties. This resulted in the City opening separate files for each of the specified properties. Each file was given a request number between 06-4690 and 06-4868 (for ease of reference, in this order these requests will be referred to as Request Number 06-4690 *et al*). Initially, the requester sent a cheque for $5.00 to cover the processing fee for his request. Subsequently, via email, the requester advised the City that he wished each property to be treated as a separate request with its own request number. The appellant sent a cheque for $780.00 to cover the $5.00 processing fee for each of his requests for information related to the listed properties.

The City responded by email the same day advising that in order to treat each property as a separate and individual request, each request required its own $5.00 request fee. It explained that for 161 properties the total request fees would amount to $805.00, not the $780.00 that the appellant had sent.

The appellant subsequently reduced the number of his requests to information related to approximately 157 properties. Accordingly, the appellant's cheque for $780.00 plus the original $5.00 fee, covered the request fee for the searches for records related to each of the 157 identified municipal properties.

The City then issued a fee estimate for the search of responsive records for Request Number 06-4690 *et al* in the amount of $1,200.00. This fee was based on 40 hours of search time at $30.00 per hour. The fee estimate noted that as the records might contain personal information, additional fees for severing the records would be calculated at a rate of two minutes per page and $30.00 per hour would be charged. The City also advised that photocopying fees of $0.20 per page would also be charged. These severing and photocopying charges were not included in the fee estimate of $1,200.00 and the City did not provide the appellant with an estimate of how much severing time might be required or how many photocopies might result. Pursuant to Regulation 823, the City requested that the appellant pay a deposit of $600.00 which amounts to 50% of the estimated $1,200.00 fee.

The requester sent a cheque in the amount of $600.00 to the City as the deposit for the search fee, and asked that it apply the remaining funds from the $1,050.00 paid in deposit for the search fees in Request Number 06-4120 to cover the remainder of the search fees in Request Number 06-4690 *et al*. The City advised that it was not prepared to apply the $1,050.00 deposit from Request Number 06-4120 to the new requests as MLS had already spent time searching for records responsive to that request and it had yet to confirm the amount to be charged for the search time already conducted.

Appeal

The requester, now the appellant, appealed the City's fee estimates for the processing of Request Number 06-4120 and Request Number 06-4690 *et al.*

The appellant based his appeal on a number of objections with respect to the way in which the City handled Request Number 06-4120 and Request Number 06-4690 *et al*. In his appeal letter, the appellant submits:

- I filed a FOI [Freedom of Information] Request 06-4120 for all folders opened by Municipal Licensing and Standards for third party signs in 2006. The City issued a decision letter with a fee estimate of $2,100.00. I submitted $1,050.00 as a deposit.

- Shortly thereafter, on November 26, [2006], I met with the City's Task Force on Third Party Signs. I then decided to amend my request; rather than asking for every folder opened by MLS for third party signs, I asked for every folder opened by MLS for third party signs for 156 particular addresses. I paid $780.00 for this request: $5.00 for each address.

- When I submitted this new request, I asked Corporate Access and Privacy to put on hold [Request Number] 06-4120 and ensure that no further search time is conducted. The time period from the time a cheque was mailed for [Request Number] 06-4120 to the time I asked it be put on hold was about 5 days. I believe I am responsible for the search time fees for those 5 days only for [Request Number] 06-4120.

- After this request was made, during late December and early January, I made many (as many as 6) enquiries to CAP employee [named individual] for the status of this request. [Named individual] never responded to my enquiries once.

- On January 4, 2007, I received a decision letter for the request for 156 properties. The City informed me that the search time estimate for the 156 properties is $1,200.00.

- The City has a policy that gives requesters 2 hours of free search time for each $5.00 request.

- The City treated all 156 requests as one request when calculating search fees in addition to charging me $5.00 per request.

- Because I wanted to treat this request as a high priority, I sent a cheque for $600.00, but at the same time asked the City to "put the remaining funds that I paid in deposit for access request 06-4120 towards this request and close that request."

- The City has now cashed my cheque for $600.00 in addition to cashing my cheque for $780.00 and [$1050.00].

- I believe the City is not entitled to cash my cheques for $600.00 and [$1050.00]. It has not issued me a decision letter regarding [Request Number] 06-4120 to reflect the actual search time for those 5 days.

- After learning that the City cashed the $600.00 and [$1050.00] cheques, I made several repeated attempts for an explanation but the City has not responded to me.

- I have received no responsive records for [Request Number] 06-4120 and I do not believe that MLS has actually spent any time on this file. I am entitled to a full refund of the [$1050.00] for [Request Number] 06-4120.

- I asked the City repeatedly to explain their fees decision for [Request Number 06-4680 *et al*] and I now resort to this appeal as my last resort.

The appellant refers to 156 property addresses in his appeal letter although he originally reduced his request to 157. This is because a duplicate address was found in his list of specified properties during the processing of the request, reducing the number to 156.

Mediation

During mediation, the City advised both the appellant and the mediator about its calculation of the search time, already taken by MLS for the time spent locating records responsive to Request Number 06-4120. A letter detailing that information, dated May 16, 2007, was sent to this office and subsequently shared with the appellant. It states, in part:

> Staff of Municipal Licensing Standards Division has confirmed that a total of 53 hours were spent searching for responsive records. Below is a breakdown of tasks performed by two (2) MLS staff.
>
> **Staff #1**
>
> Searching in IBMS system (12 hours)
> Searching in iRIMS system (8 hours)
> Manually retrieving and searching through inactive boxes (8 hours)
> Manually searching through officers' desks and filing cabinets (7 hours)
>
> **Staff #2**
>
> Searching in IBMS system (9 hours)
> Searching in iRIMS system (4 hours)
> Manually searching through inactive boxes (1 hour)
> Manually searching through officers' desks and filing cabinets (4 hours)

In that letter, the City also advised that it would be providing the appellant with a refund based on the difference of time between the deposit he paid ($1,050.00) and the actual search time;

Estimated search fee:	
70 hours @ $30 per hour:	$2,100.00
Amount paid:	$1,050.00
Actual Search time:	
53 hours @ $30 per hour:	$1,590.00
Amount paid:	$ 795.00
Search fee reimbursement:	$ 255.00

The City stated in its letter that for both Request Number 06-4120 and Request Number 06-4690 *et al*, it did not intend to charge the appellant the remaining 50% balances owed for the search time.

Also during mediation, the City advised that it is the City's policy to charge a $5.00 request fee for each property searched by MLS. It states that it charges a separate request fee for each individual municipal address and that this would cover a request relating to one issue or a number of matters, relating to that address, across any relevant program area. It explained that it identifies individual property addresses as individual requests based on the way in which the City manages its electronic and paper-based records. According to the City, for MLS records, all property records are organized by address, whether in the electronic databases or on the filing shelves and cabinets.

The City also advised that it does not have a policy of two hours of free search time per request. It stated that the *Act* no longer provides for free search time and that it is not required to provide two hours of free search time. The City advised that it does have a policy not to charge fees that are less than $10.00.

The appellant maintained the remaining objections that he raised in his appeal letter. He continued to take the position that the City has a policy of two hours of free search time and referred to a specific internal email which he submitted is evidence of that policy. He stated that the two hours of free search time policy was why he requested that the search for Request Number 06-4690 *et al* be treated as 156 separate requests. If that policy does not exist, he stated that those requests should be treated as one request.

The appellant also maintained his objections outlined in his appeal letter and indicated that the City's letter of May 16, 2007 does not adequately address them. He further stated that:

- an internal City email indicates that the City has a policy of allowing two free hours of search time for each request;
- the request fee for Request Number 06-4690 *et al* should be $5.00, rather than $5.00 for each specific property and that he asked for each property to be treated as individual request in order to benefit from the City's policy of two free hours of search time for each request; and
- it is not plausible that two City staff members conducted 53 hours of search time for Request Number 06-4120 over the course of three days (the time he submitted his cheque to the time he notified the City that the request be put on hold).

As further mediation was not possible, the file was transferred to the adjudication stage of the appeal process for me to conduct an inquiry. I decided to begin my inquiry into this appeal by sending a Notice of Inquiry to the City, initially. The City provided representations in response. I then sent a Notice of Inquiry to the appellant, seeking his representations. The appellant also provided representations in response to the Notice.

DISCUSSION:

FEE ESTIMATE

The appellant is appealing the fee estimates issued by the City for both Request Number 06-4120 and Request Number 06-4690 *et al.*

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.

Section 45(3) provides that the head shall give the requester a "reasonable" estimate of the fee to be charged. That section reads:

> 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.

More specific provisions regarding fees are found in sections 6, 7 and 9 of Regulation 823. 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 records provided on CD-ROMs, $10 for each CD-ROM.
>
> 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.
>
> 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.
>
> (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.

Pursuant to section 45(3), whether the fee exceeds $25, an institution must provide the requester with a fee estimate. Pursuant to section 7(1) of Regulation 823, where the fee is $100 or more, the institution may require the requester to pay a deposit equal to 50% of the fee estimate before the institution takes any further steps to process the request. A fee estimate of $100 or more 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.

[P-81, MO-1699]

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 823 that I have set out above. In conducting its review, this office may uphold the fee estimate or vary it.

Request Number 06-4120

For Request Number 06-4120, the issue to be decided is whether the City's fee estimate is reasonable, and if so, whether the appellant should be entitled to a refund of some, or all, of the amount paid because the City continued to search after the time that the appellant asked to have the file placed on hold.

Representations

City's representations

As noted above, the City's fee estimate for Request Number 06-4120 was $2,100.00 for 70 hours of search time at $30.00 per hour. In its fee estimate, the City explained:

> Staff of Municipal Licensing & Standards has advised that in order to locate the records which may be responsive to your request, district staff will be required to conduct a manual search of the main file system, as well as the archival records in the Records Centre. MLS staff further advise that it will require approximately 70 hours to search the records that are responsive to your request.

The appellant submitted the requisite 50% deposit of the estimated $2100.00 fee, which amounted to $1,050.00, on December 4, 2006. The City continued to process the request until January, 2007. During mediation, the City detailed in a letter dated May 16, 2007, addressed to both the appellant and the mediator, the total actual search time already taken by MLS (53 hours) to locate records responsive to Request Number 06-4120 from the time that it received the appellant's cheque to the time that it stopped searching in response to an email from the appellant on January 6, 2007, asking whether Request Number 06-4120 was still on hold. This total actual search time is outlined above.

In its representations, the City states that for Request Number 06-4120, the appellant asked for information on all property addresses with the exclusion of 27 specifically listed addresses. It submits that this type of request is difficult to search because without precise municipal addresses or a specific file number, searching its databases and conducting manual searches are difficult to do. It also submits that the calculations outlined in its letter of May 16, 2007, which detailed the search time that had already been taken for responsive records, were incorrect. In its representations, the City provides a corrected summary of costs for the work already undertaken by City staff to respond to Request Number 06-4120:

> There were 2 clerical staff in Municipal Licensing and Standards (MLS), Investigations Unit, Toronto and East York, who conducted the searches as follows:
>
> Staff #1
>
> | | |
> |---|---|
> | Searching in IBMS (MLS electronic system shared with other program areas in the division): | 12 hours |
> | Searching in iRIMS (City wide system) to locate inactive boxes of records (archived files): | 8 hours |

Manually retrieving and searching through inactive files:	8 hours
Manually searching through officers' desks and filing cabinets:	7 hours
Staff #2	
Searching in IBMS system:	9 hours
Searching in iRIMS system:	4 hours
Manually searching through inactive boxes:	1 hour
Manually searching through officers' desks and filing cabinets:	4 hours
Total:	53 hours

Total actual hours are: 53 hours @ $30 per hour = $1,590.00

The original estimate was for 70 hours @ $30 = $2,100.00. The appellant paid a deposit of half of the fee estimate or $1,050.00. Therefore, the actual amount that is due to the City for the searches conducted is $1,590.00 - $1,050.00 = $540.00.

The City submits that the fee of $1,590.00 is based on the actual work done by knowledgeable staff in MLS and provides more detail on the search for the responsive records, as follows:

> Databases had to be first searched to find the addresses of the properties that might have records relating to signs, as well as a manual search for active files in inspection and investigation officers' desks and filing cabinets, followed by a manual search through the files (almost 500) located to find the relevant folders containing the responsive records. Because of the dates specified by the appellant, this also included searching through archival boxes of files identified through iRIMS.

The City takes the position that, despite an email from the appellant dated December 7, 2006 in which the appellant first asked for Request Number 06-4120 to be placed on hold, subsequent emails confused the issue and it was of the view that he wanted Request Number 06-4120 to proceed "somewhat in tandem" with a subsequent request. This is discussed in greater detail below. The City's position is that it was only as a result of an email from the appellant dated January 6, 2007 that it was clear that he had wanted the request to be placed on hold. It submits that having received his assurances that he wanted to pursue access to the responsive records despite the fee, and having subsequently received his deposit of $1050.00, it continued to process the request until that email of January 6, 2007. Accordingly, in its representations it summarizes how it perceived the time span of the processing of the request:

> The date that the request was sent to and received by MLS was November 11, 2006. Some preliminary searches would have commenced (in order to provide the fee estimate), even though the City did not receive the appellant's deposit until December 4, 2006. The CAP [Corporate Access and Privacy] Office had been assured by the appellant that he was interested in receiving the records and would pay the deposit.
>
> To the best of our knowledge, the search stopped sometime in January, at which time it was determined that the appellant had abandoned the request and before the appellants deposit cheque for the searches was cashed. It is not possible to state how much time over the 52 [sic] hours was logged by staff. In any case, this time was not charged to the appellant.

At the beginning of December, 2006, the City received a new request from the appellant requesting access to the "entire contents of all folders through MLS history at the following addresses unless the particular address is included in the responsive records for [Request Number] 06-4120 in which case, ignore the particular address." The appellant listed approximately 161 specified properties. The City treated each property as a separate request. These requests are Request Number 06-4690 *et al.* for the purposes of this appeal. The City submits that at the time the appellant filed Request Number 06-4690 *et al* "there was no indication that the appellant intended the City to stop working on [Request Number 06-4120]" and points to the appellant's request letter where he states that he is seeking all records for the addresses listed unless "the particular address is included in the responsive records for [Request Number] 06-4120 in which case, ignore the particular address."

The City then submits:

> It wasn't until December 7, 2006, that the appellant sent an email asking The CAP Office to ask MLS to put on hold the previous request.
>
> The Access and Privacy Officer responding to the appellant's email, advised him that CAP could not use the previous fees [the $1,050.00 deposit cheque for Request 06-4120] to cover the current requests for the 156 addresses because the program areas had already been searching. She indicated that the program contact would be providing the hours and costs of the search to date.
>
> The appellant was also advised that with respect to the new request, each different property would need a $5.00 application fee. The appellant was also advised that "therefore any current or outstanding requests will be proceeded [with] after the completion of the new requests."
>
> The appellant responded as follows:
>
> > This is not what I had in mind putting all my other requests on hold for this one would violate the *Act* in my opinion and is not what I asked for. I expect this request to proceed SOMEWHAT

> IN TANDEM with the other requests that I have made. However, I would like you to give this request priority.

Thus, it was not at all clear what the expectation of the appellant was until January 6, 2007 at which time he advised CAP – "Please ensure that #06-4120 is still on hold and advise the time MLS has spent on that **so far**" (emphasis added). This was some time after their searches for responsive records in the first request and not, as the appellant states, 3 working days.

At no time, did the appellant state that he wanted his request to be "closed" or "terminated". However, in January, a decision was made that the appellant's first request had been abandoned since he had not been in further contact with CAP about it.

The City concludes its representations on Request Number 06-4120 by stating:

> In summary, the City believes that the fee for the actual searches by the program area for the first request should be upheld.

Appellant's representations

The appellant takes the position that he told the City to place Request Number 06-4120 on hold at the time that he filed an amended Request Number 06-4690 *et al* by email on December 7, 2006. This amended request will be described in great detail below. The appellant submits that he should only be charged for the search time that occurred between the day that the $1,050.00 deposit cheque was received by the City, December 4, 2006, and the day that he advised the City to place the request on hold, December 7, 2006. As a result, he believes that he is entitled to a refund of some of his $1,050.00 deposit.

The appellant submits that he filed Request Number 06-4120 in "mid-October of 2006". He states he received a decision and fee estimate of $2,100.00 from the City for this request on November 30, 2006, asking for a deposit of $1050.00. He submits that he sent the City a cheque for $1,050.00 in early December and it appears to have been received by the City on December 4, 2006.

The appellant submits that in "early December 2006", he sent a request to the City via Canada Post (Request Number 06-4690 *et al*). In that request he sought access to the entire contents of all folders throughout MLS history for signs at approximately 161 specified properties, unless the address was included in the responsive records for the previous request, Request Number 06-4120. The appellant states: "the initial wording of the request means that the request was predicated upon Request Number 06-4120 being processed."

The appellant submits that on December 7, 2006 in a telephone conversation with a CAP Officer, he explained that he did not wish Request Number 06-4690 *et al* to be predicated on Request Number 06-4120 being processed. He states that, in that telephone conversation, he asked that Request 06-4120 be put on hold and advised that he was sending an amended request "which

would make it no longer predicated upon the production of [responsive records from Request Number] 06-4120." The appellant states that he also told the CAP Officer to use the money from the $1,050 deposit for Request Number 06-4120 towards any fees for the new request, Request Number 06-4690 *et al.*

The appellant states that he sent an email to the City on December 7, 2006 at 2:04 pm detailing the amended request listing the properties and removing the reference to Request Number 06-4120. He has provided a copy of that email chain that begins with that email, to me. In that email he also states:

> Again, please ask MLS to put on hold the previous request and focus on this because this way it should take less of their time. I have sent a cheque for $780, which, with my first cheque for $5 should cover all properties – in other words, please treat each address as a separate request with its own number.

He states that the City responded by email the same day, on December 7, 2006, at 3:00pm. In that email, the City's Access and Privacy Officer states:

> [Named individual] has advised me that your $5 application fee arrived today. However, in order for us to treat the following properties as separate and individual FOI requests, each request would require its own $5 application fee. Therefore, the total application fees for 161 new requests would be $805.
>
> Unfortunately, we cannot use the money from the previous 50% deposit (of $1,050) toward the new application fees. The deposit money covers the MLS staff's search time spent on request #06-4120. The MLS Coordinator will calculate and determine the total search time already put into the previous request, she will then advise our office the amount of money required to cover their staff's work thus far.
>
> …
>
> Also, please note that, per our telephone conversation today as well as your email request, we will treat these new requests as a priority. Therefore any current or outstanding requests will be proceeded after the completion of the new requests.

The appellant explains that at the time of this email exchange he had a few hundred outstanding requests for sign permits. He submits that he interpreted the City's reference to "current and outstanding" to apply to those requests and not Request Number 06-4120 which he submits he had previously made clear in his telephone conversation should be placed on hold pending the completion of Request Number 06-4690 *et al.*

The appellant responded by email, at 3:38 pm. Addressing the City's position that it could not use the money from the 50% deposit for Request Number 06-4120, the appellant stated: "I understand that, no problem." Addressing the City's statement that any current or outstanding

requests will be processed following the completion of Request Number 06-4690 *et al*, the appellant stated:

> This is not what I had in mind – putting all my other requests on hold for this one would violate the *Act* in my opinion and is not what I asked for. I expect this request to proceed SOMEWHAT IN TANDEM with the other requests that I have made. However, I would like you to give this request priority in general, but not to the extent that you do not work on my other requests. Most of my other requests have already been placed on 2-3 week holds and I expect the 2-3 week hold to either stay at 2-3 weeks or be only slightly extended to accommodate this request's general priority level. Please let me know if this is OK. I believe that most of the files will be less than 6 pages and will required minimal severing, usually only the complainant will be severed, if there is a complainant. Please let me know.

The appellant submits that again, his reference to "other requests" in his email response at 3:38pm did not refer to Request Number 06-4120 but to the hundreds of other outstanding requests he had with the City. He submits that he believes it was clear to the City that his comment that those outstanding requests proceed "somewhat in tandem" with Request Number 06-4690 *et al* did not include Request Number 06-4120 because in his earlier telephone conversation he had made it clear that Request Number 06-4120 should be placed on complete hold pending the completion of Request 06-4690 *et al.*

The appellant submits that if the City had not been certain of whether Request Number 06-4120 should figure among those requests that should proceed "somewhat in tandem" with Request 06-4690, it could have asked for clarification in its subsequent email sent at 4:27pm on December 7, 2006 in which it stated:

> To make the new requests a priority, then there would be necessary delays in the completion of the other requests as our office does not have the resources to complement the work volume that we receive on a daily basis. For this reason, it is likely that some of these files would necessitate time extensions. We are doing our best to keep up the high volume of requests that you have submitted. As a reminder, if the delay becomes a real concern, you have the right to file an appeal to the [Information and Privacy Commissioner/Ontario] on the City's response time.

The appellant states that he responded on December 8, 2006 at 2:00pm, as follows:

> What I object to is putting ALL of my other requests on total hold while you process the MLS request, which is what your first email suggested. Please confirm that you will not be doing this but processing with the requests somewhat in tandem with priority to the MLS file.

The City responded on December 9, 2006 at 9:37am, as follows:

> [W]e will try out best to process all of your requests at the same time however, since the new requests will be priority (as per your instruction) they will take precedent over the existing ones. Given the significant volume of requests you've submitted and limited staff resources we have, we are making tremendous efforts to accommodate all of your requests in a manner that is best we can.

The appellant submits that "it should be pretty clear to an outside observer that on December 7, 2006 at 2:04 pm…I asked the City to put [Request Number] 06-4120 on hold." The appellant submits that he is responsible only for the search time between December 4, 2006 (when the City received his cheque) and December 7, 2006 (when he asked for it to be put on hold).

The appellant states that on January 6, 2007, he sent an email to the City inquiring about the status of Request Number 06-4690 given that he had not yet been provided with responsive records for that request which he had asked be given priority processing. In that email he also stated:

> Please ensure that #06-4120 is still on total hold and advise the time MLS has spent on that so far.

The appellant submits that the only response he got from the City to his email of January 6, 2007 was a return email from the City on January 8, 2007 thanking him for his patience and advising him that his concerns would be discussed with the Manager of Public Access.

The appellant states that on January 11, 2007, when he received a fee estimate for Request Number 06-4690 *et al*, he immediately sent an email to the City. That email included the following about Request 06-4120:

> [P]lease put the remaining funds that I paid in deposit for access [Request Number] 06-4120 towards this request [Request Number 06-4690*et al*] and **close that request**...
>
> Please note that I have already repeatedly and urgently requested the status of my deposit for [Request Number] 06-4120 and [identified CAP Officer] has failed to respond to every one of my requests for information about my deposit for [Request Number] 06-4120…

The appellant takes the position that he is responsible for the time spent searching for records responsive to Request Number 06-4120 for only the three days between the date the $1,050.00 cheque was received by the City on December 4, 2006 and the time that he told the City to place Request Number 06-4120 on hold on December 7, 2006. He submits that he is entitled to a refund of his $1,050.00 because the City has not proven that it spent any time during those three days searching for responsive records.

Analysis

Fee and fee estimate

Based on the information before me, including the City's original fee estimate and its letter of May 16, 2007 detailing the breakdown of the fee for City's actual search time for records responsive to Request Number 06-4120, I find that both the City's fee estimate and subsequent fee is reasonable.

The City originally estimated 70 hours of search time to locate records responsive to the appellant's request. In my view, this is reasonable. I accept the City's explanation that it is difficult to search for this type of information without precise municipal addresses. Given that this is a broad request that would understandably generate many responsive records, I find it reasonable to accept that to locate the information sought in this broadly-worded request, the City first had to identify the addresses of the properties that might have records relating to signs through a database shared by MLS and other program areas. It was then required to conduct manual searches to locate the relevant folders, including searches through archival boxes identified by the City's database of inactive records.

In addition, I accept the City's fee and more detailed explanation of the search time that has been undertaken to date by knowledgeable City staff to respond to Request Number 06-4120 and find that it is consistent with the time that it had previously calculated in its fee estimate. Accordingly, I uphold both the City's fee estimate of $2,100.00 and its fee calculation of $1,590.00 for actual time spent searching to date for records responsive to Request 06-4120.

I note that in its original fee estimate, the City advises that because the responsive records may contain the personal information of identifiable individuals, there may be a fee for severing the records, but does not provide the appellant with an idea of how much information might require severing along with an estimate of the possible charges associated with preparing the records for disclosure. I also note that the City has not provided the appellant with an estimate of the total number of pages that might be responsive to the request and an estimate of the possible photocopy fee. The City is required to charge for both photocopying and preparation of records for disclosure pursuant to section 45(1) of the *Act*. The City is reminded that given that the purpose of a fee estimate is to allow a requester to make an informed decision as to whether he wishes to pay the fee to pursue access to the records, this type of information forms a necessary part of a fee estimate. However, despite the City's failure to provide estimates for these amounts, I accept that both its fee estimate for search time and fee for actual search time conducted to date are reasonable, taking into account all of the circumstances present in this appeal.

Accordingly, I will uphold the City's fee and will order the City to issue a final access decision for Request Number 06-4120. The decision should identify any exemptions that may apply to the information contained in the responsive records and describe in detail the total fee that the City is charging for the processing of the request. The decision should also clearly identify the remaining amount that is owed to the City by the appellant; calculated as the sum of the

remaining search fee (that which is not covered by the $1,050.00 deposit) and any preparation and photocopy fees.

Is the appellant entitled to a refund?

The appellant has provided me with copies of the email chain beginning on December 7, 2006 between himself and the City and other correspondence related to this appeal. Both the City and the appellant have quoted portions of the email chain and letters in their respective representations and I have reproduced those which are relevant to the timing of the appellant's request that Request Number 06-4120 be placed on hold.

From the messages detailed in the correspondence that passed between the appellant and the City between December 7, 2006 and January 11, 2007, in my view, it is not clear that the appellant asked for Request Number 06-4120 to be placed on hold. Although he did not identify the request by date or request number, in his email of December 7, 2006 at 2:04 pm it is clear that the appellant asked for Request Number 06-4120 to be put on hold in order for the City to give the new request, Request Number 06-4690 *et al*, priority treatment. However, in my view, in his subsequent emails, the appellant himself undermines the clarity of his initial position.

Responding to the City's comment, in its email of December 7, 2006, at 3:00pm, that it would treat Request Number 06-4690 *et al* as a priority and, therefore, complete that request prior to completing "any current or outstanding requests" the appellant advised, in his email of December 7, 2006, at 3:38pm that he expected the new request to proceed "SOMEWHAT IN TANDEM with the other requests" that he had filed. He goes on to attempt to clarify that although he would like the City to give priority to Request Number 06-4690 *et al* he does not want the City to "do no work on [his] other requests" but would accept a slight delay to accommodate Request Number 06-4690 *et al*'s priority status. In that email of December 7, 2006 at 3:38pm, the appellant makes no mention of the fact Request Number 06-4120 is an exception to the general rule that all previous requests should proceed "SOMEWHAT IN TANDEM" with the priority request or that it didn't form part of his reference to "the other requests that [he has] made".

In his email of December 8, 2006 at 2:00pm, the appellant again made no reference to the fact that Request Number 06-4120 should be treated differently than his other requests. Instead, he stated:

> What I object to is putting ALL of my other requests on total hold while you process the MLS request, which is what your first e-mail suggested. Please confirm that you will not be doing this but processing the requests somewhat in tandem with priority to the MLS file.

In my view, based on the communications that passed between the parties, which is the evidence before me, it was reasonable for the City to conclude that it ought to continue to process Request Number 06-4120 "somewhat in tandem" with priority Request Number 06-4690 *et al*, along with all the appellant's other requests in accordance with his instructions. I accept that it was reasonable for the City to conclude that it should continue to process that request until

January 11, 2007 when it received the appellant's letter stating: "Please ensure that [Request Number] 06-4120 is still on total hold and advise the time MLS has spent on that so far."

Accordingly, I do not find that the appellant is entitled to a refund of the $1,050.00 as that money has been applied to search time that has already been completed for Request Number 06-4120. The City expended a significant amount of search time on this request and the Freedom of Information scheme is based on a user-pay principle. In the circumstances of this appeal, I do not accept that the cost of $1,050.00 for search time should be borne by the City.

In circumstances where there are complicating factors to a request such as a significant number of related or similar requests, multi-faceted requests, significant amounts of records, or where clarifications and modifications are being made to various elements of a request, sometimes a great deal of back and forth communication between the institution and the requester is necessary. In these circumstances, a certain degree of confusion is likely to arise if both parties are not diligent in ensuring that their expectations are clear. An institution should seek clarification from a requester if it believes that it is not clear about the request or if requested records do not fit within the way its records are kept. However, in my view, it would be unreasonable to assume that the requester does not also have a responsibility to make his requests as clear as possible and to ensure that the institution is clear on his expectations, especially in situations where the issues surrounding his requests are not straightforward. I would encourage both requesters and institutions to be as clear and precise as possible in their communications with each other and, wherever possible, document in writing any requests for action to be taken (requesters) and any steps taken in response to such requests (institutions).

Although I have upheld the City's fee estimate and have found that the appellant is not entitled to a refund, as he has paid his deposit he is entitled to a final decision on access with respect to the records responsive to Request Number 06-4120. That access decision should describe any exemptions that might apply to portions of the responsive records and, given that the appellant has paid a deposit based only on the total estimated fee for the processing of the request, include the balance of the fee that the appellant is required to pay in order to obtain access to those records. As noted above, in addition to the fees for search time as detailed in its estimate, the City is entitled to charge for the preparation of the records for disclosure and for photocopies. These fees should be included in the access decision as well.

Accordingly, in my order provisions below I will order the City to complete its search for records responsive to Request 06-4120 (if it has not already been completed), issue an access decision with respect to those records and describe in detail the balance outstanding by the appellant for obtaining access to the records and portions of records that the City is prepared to disclose in response to Request Number 06-4120.

Request Number 06-4690 *et al*

For Request Number 06-4690 *et al*, the primary issue to be decided is whether the City's fee estimate is reasonable. Additionally, the appellant raises the issues of whether he is entitled to two hours of free search time and, if not, whether the City should be entitled to treat each individual property as a separate request and charge a $5.00 request fee for each.

Representations

City's representations

On January 4, 2007, the City issued a fee estimate for Request Number 06-4690 *et al* in the amount of $1200.00 for 40 hours of search time to locate responsive records. In that letter, the City advised that the records may contain personal information which would have to be severed at a cost of two minutes per page and $30.00 per hour. The City also advised that photocopying fees would be calculated at $0.20 per page.

The City explains in its representations that "for ease of reference, the program area provided a search fee estimate for all of the 156 separately identified addresses." It submits that in hindsight, it would have been "more consistent with the City's policy" to break down the total search fee estimate provided by the program area and give the estimated time required for each address.

In its representations, the City provides a global breakdown of the actual time spent searching the relevant records by a staff person. The City submits that because 156 specific property addresses were identified in the request "the searches were similar but not as complicated as for [Request Number 06-4120]:

> 1. Searching in IBMS for each of the 156 property addresses to determine if there was a folder(s) responsive to the request = 20 hours
> 2. Searching and retrieving in IRIMS for files that had been archived = 5 hours
> 3. Searching manually in active files in the office or filing cabinets or locating the active files that had been signed out to inspectors = 16 hours
>
> Total number of actual search time = 41 hours…
>
> The appellant was originally provided with a search fee estimate of 40 hours @ $30.00 = $1,200.00 for all property addresses and was requested to pay half or $600.00.
>
> However, if the City had divided the actual search time by the number of addresses, the cost per request would have been approximately 41 hours (2460 minutes) divided by 156 = 15.8 minutes @ $30.00 an hour or $7.90. Since this amount is under $10.00, the City would not have charged the appellant any costs unless the photocopying and severing fees brought the total fees to $10.00 and over.
>
> All of the requests have been completed. There were no photocopying fees charged to the appellant. However, if the search fee of $7.90 and the charges for photocopying and severing fees were added together, 15 files would have charges over $10.00. These additional charges for photocopying and severing total $50.20. (A breakdown by each file can be provided).

> Given that the appellant has paid a $5.00 application fee for each property address, and would not have paid any charges per file under $10.00, the City is prepared to waive the amount of the deposit for search which the appellant paid for the 141 files whose charges were less than $10.00 which is $556.95.
>
> The appellant, however, would have had to pay the amount of the additional charges of $50.20 for severing and photocopying plus the amount owed to the City of $540.00 for the actual searches for responsive records for the first request. Therefore, the amount which is due to the City is $590.20.
>
> The appellant therefore owes the City $590.20 - $556.95 = $33.25. However, the City is prepared to waive this amount.
>
> The City believes that its waiving of the fees as outlined above is a reasonable resolution of this matter in the circumstances of this appeal.

The City submits:

> Prior to 1996, under section 45(a) of the *Act*, requesters were required to pay "as search charge for every hour of manual search required **in excess of two hours** to locate a record" (emphasis ours).
>
> Therefore, until the *Act* was amended in 1996, the City was required by legislation to provide requesters with two free hours of search time. The City has never had a *policy* of two free hours of search time or a policy having the same effect.

Addressing why it charged $5.00 for each address the City submits:

> The City requires a $5.00 application for each FOI request for each individual municipal address. The reason for this requirement is provided in part on pages 2 and 3 of the City's June 7, 2007 letter to the Mediator:
>
> > The reason for this can be explained by the way the City manages its electronic and paper-based records. For example, MLS records are organized by property addresses both in its databases and (MLS Divisional system and IRIMS City-wide records management system) and physically on the filing shelves and cabinets. Therefore, without a precise municipal address and/or a specific file number, both systems and manual searching tasks would be difficult or impossible to do.
>
> On the other hand, organizing certain record holdings by property address makes it easier to locate all information relating to a specific property across a number of program areas in response to an FOI request. A request is charged only one application fee to cover such a request …

> For request 06-4120, the appellant asked for information on all property addresses with the **exclusion** of the 27 addresses specifically listed. There was no way that the City could have determined what the remaining addresses were and therefore could not charge the appellant $5.00 per municipal address. As indicated above, this was a more difficult request in term of searching for relevant records.
>
> Requests 06-4690 *et al* was for 156 separately identified property addresses and therefore as agreed with the appellant a $5.00 application was required for each address.
>
> …
>
> For ease of reference, the program area provided one search fee estimate for all of the [157] separately identified addresses. In turn, the CAP office provided the fee estimate to the appellant. The alternative would have been to break down the total search fee estimate provided by the program area and for each file give the estimated search time. In hindsight, this would have been more consistent with the City's policy…
>
> The City has never treated the appellant's requests any differently from those received from other requesters. Please see the sample lists of some of requests from both the appellant and other requesters in Appendix A. These lists show that each municipal address was treated as a separate access request and therefore a fee of $5.00 for each was required. The City has never treated the appellant's or other requesters' requests as one request where there are multiple properties involved, if the addresses are **known**. [emphasis in original]

The City explains that some properties may have more than one number associated with the property or building address.

The City also submits that it is entitled to charge $5.00 for each property address, since each request is essentially "self-contained":

> [M]any requests are for all information relating to a specific property located in a number of program areas but as indicated above only one application fee is charged. The City believes that this is fair and equitable and in many cases, means that requesters including the appellant, are able to benefit from the City's policy of not charging any fees under $10.00 for any one request.
>
> For example, if a request for all information on 100 properties is treated as one request and there are a total of 1000 pages of responsive records of which 600 has to be severed, the total cost would be $800.00 ($200 for photocopying and $600 severing). However, if there are 100 separate requests (one for each property address), and each request file has 10 pages of responsive records and 6 pages

> have to be severed, the total cost for each request would be $8.00 ($2.00 for photocopying and $6.00 severing**).** Since the City does not charge for fees under $10.00, there would be no fees assessed. The total cost for 100 requests would thus be the $5.00 application fee for each request = $500.00, a "savings" of $300.00. There would also be savings in terms of no search fees being charged if the total costs are less than $10.00.

Appellant's representations

As noted above, the appellant submits in early December 2006, he mailed a request via Canada Post seeking access to the "[e]ntire contents of all folders throughout MLS history for signs at [161 specified addresses] unless the particular address is included in the responsive records for Request Number 06-4120 in which case ignore the particular address." The appellant enclosed a cheque for $5.00 to cover the processing fee for the request.

Subsequently, the appellant amended his request so that it was no longer predicated on the processing of Request Number 06-4120. In his amended request, he asked that the City treat each address as a separate request with its own request number and advised that he had sent a additional cheque for $780.00 (to add to the initial $5.00 sent with the original request) to the City to cover the $5.00 processing fee for each of the 161 listed properties.

The City advised the appellant that the total processing of requests for 161 properties at $5.00 each would amount to $805.00. In lieu of sending another cheque, the appellant deleted four addresses from the list leaving approximately 156 listed properties at issue.

On January 11, 2007, the appellant received a fee estimate of $1,200.00 for Request Number 06-4690 *et al*. He submits:

> I was quite surprised to receive this fees estimate, as I paid $5.00 per municipal address and the City's policy is to either provide two free search hours or not charge for less than $10 in fees per FOI.

The appellant submits that he wrote an email to the City that day advising that he would be sending in the requisite 50% deposit ($600.00) as he did not wish to delay the processing of the request, and needed the records. However, in his email he advised the City that he felt he should be entitled to a refund of $780.00 for the processing of 156 requests and only charge $5.00 for one request because the City treated the 156 requests as one in its fee estimate. In that email, the appellant stated:

> I have paid $5 for each address in the request for a total of $780. You have given me one fee estimate for all of the requests combined. You should provide me with one estimate for each of the individual requests OR you should refund the $5.00 that I have paid for each of the addresses. Either you are treating the requests as one file or you are treating them as 156 files.

> If you insist on treating all the 156 requests as one request, I will be asking you to put the $780 that I have already paid towards the 50% deposit of $600 that you are requesting. If you do that, you can return my cheque of $600 that I am mailing tonight.

The appellant alleges that the reason the City did not break down the total search fee estimate in a manner that "was more consistent with the City's policy", as it stated in its representations was because "the City would not have issued any search fee estimate for any of the files because the total search fee estimate would have amounted to less than $10 per [request]." The appellant submits that the City deliberately violated its own policy to create a "fee estimate letter that the City knew was fraudulent" for the purpose of ensuring that it responded to the 156 requests within the 30 days from the date of request compliance period required by the *Act*, something that it could not have done if it treated the 156 requests separately.

The appellant submits that he should not have been required to pay $5.00 for each municipal address. He submits:

> While I paid $5 for each request in these [requests], upon reflection I realize that there is no provision in the *Act* for these charges and the IPC should strike down the City claim that it is entitled to charge $5 for each municipal address. It should be noted that I paid $5 for each and every municipal address that I ever file a [request] for, about 650 municipal addresses …
>
> [T]he City correctly notes that "smaller individual requests can be more efficiently managed, and for the most part do not require time extensions. Requesters are able to obtain the information they need on each property more quickly than if it is one large multi-property (complex) request." While you should rule the outright so-called "policy" of charging $5 for each municipal address illegal, you should recognize that in some cases individual requesters may wish to pay $5 for each municipal address or for a smaller number of municipal addresses to make the requests into a more manageable size.
>
> It is impossible to say how many municipal addresses I would have grouped into one [request] had I known that I did not have to pay $5 for each address. A reasonable estimate is two addresses per $5. If the IPC agrees with this number, the City should be asked to refund half of the $785 or $390 and treat these [156] [requests] as 79 [requests] for the purpose of charging fees.

Analysis

Fee and fee estimate

The City agrees that rather than providing the appellant with a global breakdown for the total fees charged for the processing of Request Number 06-4690 *et al*, it should have provided separate fee estimates for each of those requests. It submits, however, that the processing of all the requests that make up Request Number 06-4690 *et al* has been completed and it has provided

a breakdown of the *actual* time spent searching for all relevant records. In its breakdown, the City divides the total number of search hours by the number of properties. I find that, in the circumstances, this is an acceptable way to determine a reasonable estimate of the search time taken to locate records for each of the 156 property addresses and, based on the City's representations, that the search time estimate is reasonable.

The City submits that for each property address, a search fee of $7.90 was incurred and for 141 of the property addresses, the $7.90 search time added together with any photocopying or severing fees amounts to fees under $10.00. Given its policy of waiving fees for any one request where they amount to less than $10.00, the City is prepared to waive the fee for 141 property addresses. It submits that these fees total $556.95 and that it is prepared to waive this amount.

The City submits however, that for the fees for the 15 remaining property addresses, the photocopy and severing charges brought the total fees on those requests to $10.00 and over. It submits the additional charges for photocopying and severing total $50.20 and that this is owed by the appellant to the City.

Having reviewed the City's representations closely, I am unable to agree with aspects of the City's calculations. Given that the City calculates a $7.90 search fee for each property address, it is not clear to me how the total fees for the 141 files for which the City is prepared to waive the fee amounts to $556.95; nor is it clear to me how the total fees for the 15 remaining property addresses that are said to come to $10.00 or more can amount to only $50.20.

The City also proposes a solution that I cannot follow. It submits that the appellant owes the City $540.00 for Request Number 06-4120 and $50.20 for the 15 property addresses in Request Number 06-4690, which comes to a total of $590.20 owed to the City by the appellant. The City proposes to subtract $556.95 (total fees for the 141 property addresses that it is prepared to waive) from $590.20 (the total owed by the appellant). The remainder is $33.25 and the City is prepared to waive that amount. Not only do I not understand the logic behind this calculation, it is not clear to me whether by proposing this solution the City is prepared to waive all of the search and preparation fees for Request Number 06-4690 *et al* or not.

Given the lack of clarity in the City's calculations, I cannot determine what the City believes it is owed in charges for the processing of Request Number 06-4690 *et al*, what it is prepared to waive or what it is required to charge the appellant under the *Act*. It is unclear to me whether the City is prepared to waive only the fees for the 141 property addresses with the search fees below $10.00 or whether it is prepared to waive all fees for the processing of this request. Accordingly, I cannot make a determination of whether the City's fee for Request 06-4690 *et al* is reasonable. Therefore, I will order the City to waive any outstanding fees for the search, preparation and photocopying of the records responsive to Request Number 06-4690 *et al* and to refund the appellant the $600.00 paid in deposit for the estimated search fees for those requests.

Despite my finding in the current appeal, both parties are reminded that the *Act* is based on a user pay principle, which I will discuss in greater detail below. The City is required to charge fees for the processing of access requests in accordance with the provisions of the *Act*. Conversely, the provisions of the *Act* make it clear that a requester is not entitled to access to unlimited

information free of charge. My waiver of the fee in the circumstances of this appeal does not preclude the City from charging the appellant, in accordance with the *Act*, for any outstanding or future requests.

I would, however, suggest to the City that it pay particular attention to the clarity of its explanations of any fees owed by a requester. I would also suggest that in some situations where a single requester submits multiple requests, the City keep any calculations related to fees separate for any such requests. Applying monies paid to or owed to the City for one request to amounts paid to or owed to another (for example factoring in the $540.00 owed by the appellant for Request Number 06-4120 to calculations related to Request Number 06-4690 *et al*), can result in confusion, and has done so in this instance. The City is advised to keep such fees and calculations separate and distinct.

Request fees

The City states that smaller requests are generally easier to manage and submits that in circumstances where specific addresses are known it has always treated each individual property address as a separate request. The appellant does not dispute the City on this point as he states that he has paid $5.00 for each and every property for which he has filed an access request, which, he submits, amounts to approximately 650 municipal addresses. He also agrees that smaller requests can be managed more efficiently by both parties. However, the appellant suggests that property addresses could be grouped together in small numbers. He suggests, for example, that a single request for which a $5.00 request fee would be charged might encompass two property addresses rather than just one.

The *Act* does not provide any guidance on how requesters should phrase their requests for information. It does not provide for circumstances in which multi-faceted requests might be treated as one request or several. The *Act* simply provides that the fee prescribed by the regulations ($5.00) should be charged for each request. Nevertheless, it is neither appropriate for a requester to attempt to avoid incurring search fees by parsing the request in a manner that would ensure the fee for each part is too small to justify requiring payment; nor is it appropriate for an institution to penalize a requester who lists multiple requests in one letter by treating it as one request in order to inflate search fees.

In my view, the appropriate determination in this case of whether a request for information should be treated as a single request or several should be based on how an institution's records are maintained and what the most straightforward, logical way to search for and to retrieve the responsive records might be. From the City's representations, I understand that MLS records are organized by property addresses both electronically, in that department's database and in the City-wide records management system, as well as physically, in the filing cabinets and archival boxes. The City submits that this method of managing the records makes it easy to locate all information relating to a specific property across a number of program areas in response to an FOI request.

Based on the City's explanation of how the types of records at issue in this appeal are kept and why, I accept that requests that seek information about specific property addresses such as those

that encompass Request Number 06-4690 *et al* result in searches that are essentially "self-contained" within those specific property addresses, whether an individual wants all the information relating to that property or just a specific type. In my view, it seems reasonable that requests relating to each property address would require a new search either by creating a query to locate electronic records in a database or by physically pulling a separate file related to that address from a filing cabinet or box. Not only does the characterization of each property address as a separate request best reflect the way in which the City would locate the responsive records but it also, taking into account the City's policy not to charge for fees under $10.00, minimizes the amount of fees that the requester will be required to pay. Therefore, in the circumstances of this appeal, I find it reasonable to conclude that each municipal property address is properly characterized as a separate request and requires its own $5.00 request fee.

Accordingly, I uphold the City's decision to treat each property address as a separate request.

Free search time

One of the issues that the appellant raised in his letter of appeal, and also during both the intake and mediation stages of the appeal process, was that he is entitled to two free hours of search time. He submits that the City has a policy that gives requesters two hours of free search time for each $5.00 request and that it did not honour that policy when processing his request. In fact, the appellant advised the mediator that he specifically framed Request 06-4690 *et al* to treat each property as a separate request in order to benefit from the City's policy of two hours of free search time. During mediation, the appellant advised that he had a copy of an internal City email that confirmed this policy and that he would provide it to this office to support his claim. The appellant did not provide a copy of that email to this office nor did he subsequently address the issue of whether he was entitled to two free hours of search time in his representations. Nevertheless, I will address it briefly in this order.

As the City submits, prior to 1996, under section 45(1)(a) of the *Act*, requesters were required to pay "a search charge for every hour of manual search required **in excess of two hours** to locate a record" (emphasis added). This means that at the time, requesters were in fact *entitled* to two hours of free search time. However, section 45(1) of the *Act* and the accompanying Regulations dealing with fees were amended in February, 1996 by the *Savings and Restructuring Act* (Bill 26). Section 45(1)(a) now requires a requester to pay for "the costs of every hour of manual search required to locate a record." Accordingly, there is no longer any legislated requirement for institutions to provide requesters with two hours of free search time.

The appellant's position however, is based on a *policy* that he believes that City has to provide two free hours of search time for each request. His position is that the City did not honour this policy with respect to his requests. The City submits that it does not have such a policy, nor has it ever had such a policy. It submits however, that it does have a policy not to charge requesters for fees under $10.00 for any one request As noted, the appellant makes mention of this issue in his representations. Despite his reference to an internal City email, the appellant has not provided me with any evidence to support his claim that a two hour fee search time policy exists. Accordingly, I find that the appellant is not entitled to two free hours of search time per request.

ADDITIONAL ISSUE

The appellant submits that when he provided the list of property addresses for Request Number 06-4690 *et al* he listed a particular address twice and two files were opened (Request Numbers 06-4826 and 06-4827). He explains that this is why, in his representations, he refers to 157 properties while the City refers to 156. He submits that despite noting that this was a duplicate address and closing Request Number 06-4827 the City has not refunded his $5.00.

I note that the copy of the appellant's request that has been provided to me by the City includes notes made by the City identifying which request numbers were assigned to which properties. On the copy that has been provided to me the City has noted that Request Number 06-4827 is a duplicate address and has crossed it out.

Accordingly, I will order the City to refund the appellant $5.00 for Request Number 06-2837.

ORDER:

1. I uphold the City's fee estimate and fee with respect to Request Number 06-4120.

2. I order the City to issue a final access decision for Request Number 06-4120 by **January 5, 2009**. The final access decision should identify any exemptions that apply to the responsive records and detail the total fee to be charged, including any preparation and photocopy fees. The City should also clearly identify the remaining amount that is owed by the appellant.

3. I order the City to waive all fees, including search, preparation and photocopying charges, for Request Number 06-4690 *et al* and refund the appellant his deposit in the amount of $600.00 by **January 5, 2009**.

4. I uphold the City's decision, in the circumstances of Request Number 06-4690 *et al*, to treat each individual property as a single request requiring a $5.00 application fee per request.

5. I order the City to refund the appellant $5.00 for the duplicate property identified as Request Number 06-4827 by **January 5, 2009**.

Original signed by: November 25, 2008
Catherine Corban
Adjudicator