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

ORDER MO-2485

Appeal MA08-151-2

City of Mississauga

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NATURE OF THE APPEAL:

The City of Mississauga (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for information pertaining to "valley lands." In his request, the requester specified that he was seeking the following:

> Full disclosure outlining all city owned and about to own sensitive valley prone regulated lands, that the city has acquired gratuitously, insistence and mandatory laws passed since 1978. Namely,
>
> 1) sums paid for ownership
> 2) exchange of lands
> 3) laxing building permit requirements
> 4) locations
> 5) assessed 2007 values

The City issued a decision stating that the requested records do not exist and:

> …the City does not maintain a separate listing of City-owned lands in sensitive valley prone regulated areas. Therefore, access cannot be provided as the records do not exist.

The requester, now the appellant, appealed the City's decision, contending that records exist and that the City had not conducted an adequate search. Appeal MA08-151 was opened by this office.

Following the resolution of Appeal MA08-151, the appellant clarified that the request was for the following information from the time of the Official Plan's approval (which he believed to be about 2001 – 2003) to present:

- The number of valley land properties acquired by the City.
- The location of each of the valley land properties acquired by the City. The appellant indicated that he did not require the specific address and that the roll number for each property would be satisfactory.
- The dollar amount that the City paid for each acquisition.
- The basis for the acquisitions – whether the property was acquired as a result of:
  - Non-payment of taxes
  - Trade-offs – whether property was acquired as a result of the property owner submitting a building permit application or a sub-division application
  - Property owner giving the property to the City

The following is a summary of the events that occurred during the mediation of Appeal MA08-151. These events are relevant facts in the present appeal.

- The appellant contended that records must exist within the City's legal services, planning, realty and tax departments for the requested records.

- In a teleconference between the City, the appellant and the mediator, the City advised that searching for the records, based on the information provided by the appellant is difficult, since the City does not maintain files under the titles "valley land" or "acquisition." The City indicated that it would be helpful if the appellant could provide certain property information (e.g. name of property owner, roll number, pin number, etc…). The appellant indicated that he would provide a list of about 20 properties, with the pin number associated with each property. Shortly afterward, the appellant submitted a list of properties to the City. The appellant's list contained 45 properties and ranged from 1972 to 2004.

- The City subsequently searched three properties from the appellant's list of 45 properties and located servicing agreements for each of three properties. The City considered these agreements to be responsive to the appellant's request.

- The appellant attended the City's office and viewed one of the three sample planning Department files, in an effort to help identify responsive records. At the conclusion of his review, the appellant advised that he would like to view the Planning Department's files for all 45 properties, to identify the responsive records.

- The City issued a fee estimate and interim access decision with respect to providing access to the 45 properties on the appellant's list. As a result, appeal MA08-151 was closed.

The appellant then appealed the City's fee estimate to this office and Appeal MA08-151-2 was opened.

The City's fee estimate for providing access to the 45 properties was as follows:

Search	.25 hour / property for 45 properties 11.25 hours @ 7.50/15 minutes =	$337.50
Preparation	1 hour / property for 45 properties 45 hours @ 7.50 / 15 minutes = (including severing)	$1350.00
Photocopying	2 pages per property for 45 properties 90 pages @ .20 / page =	$18.00
		$1750.50

The City referred to section 6 of Regulation 460 under the *Act* as its authority regarding its search, preparation and photocopying fees.

The appellant appealed the City's fee estimate, contending that the records are public information and should, therefore, be made available at no charge.

During mediation, the appellant clarified that he objects to paying fees to access the Planning Department files. He contends that the Planning Department files were always available free of charge to the public in the past and that they should continue to be made available, free of charge. As a result, section 50(2) of the *Act* (pre-existing access) was added as an issue in the appeal.

With respect to files from the City's other departments (e.g. Office of the City Clerk, Realty, Legal Services) the appellant advised that he may be willing to pay the fees associated with accessing these files, but that it would depend on the amount. The City advised that the $1750 estimate includes search, preparation and photocopy costs for these files (e.g. Office of the City Clerk, Realty, Legal Services), but it cannot further advise of the exact fees for these files, until it conducts an actual search. The City further cited section 17(1)(b) of the *Act* and explained that the amount of the fee was due in part to the appellant being unable to identify responsive records. As a result, scope of request and responsiveness of records was added as an issue in the appeal.

As further mediation was not possible, this file was moved to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry. I initially sent a Notice of Inquiry to the City setting out the facts and issues under appeal. The City provided representations in response. I then sent a Notice of Inquiry to the appellant, along with a copy of the City's representations. The appellant also provided representations. Finally, I provided the City with an opportunity to reply to the appellant's representations. The City provided representations in reply.

DISCUSSION:

SCOPE OF THE REQUEST / RESPONSIVENESS OF THE RECORDS

The City submits that the appellant has not provided sufficient detail to enable it, upon reasonable effort, to identify responsive records. The City argues that the appellant is unable, after many consultations and meetings with the City, to identify which records are responsive to his request. Further, the appellant is not satisfied with the records identified by the City as responsive.

The appellant submits that the City has not made reasonable efforts to locate responsive records. While reasonable search is not at issue in this appeal, I will address the issue of whether the records identified by the City are responsive to the appellant's request.

Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

> (1) A person seeking access to a record shall,
>
> (a) make a request in writing to the institution that the person believes has custody or control of the record;
>
> (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;
>
> . . .
>
> (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour [Orders P-134 and P-880].

To be considered responsive to the request, records must "reasonably relate" to the request [Orders P-880 and PO-2661].

Representations

The City submits that the appellant's request, as clarified during mediation of appeal MA08-151, is as follows:

> (a) The number of valley land properties acquired by the City.
> (b) The location of each of the valley land properties acquired by the City: the roll number, rather than the specific address.
> (c) The dollar amount that the City paid for each acquisition.
> (d) The basis for the acquisitions – whether the property was acquired as a result of:
>
> - Non-payment of taxes
> - Trade-offs – whether the property was acquired as a result of the property owner submitting a building permit application or a sub-division application
> - Property owner giving the property to the City.

The City explained its response to the appellant's clarified request as follows:

> The City advised that searching for such records would be difficult because the City does not maintain files under the titles of "valley land" or "acquisition" and said that it would be helpful if the appellant could provide certain property information, such as the name of the property owner, the roll number, pin number etc.

> The appellant indicated that he would provide a list of about 20 properties with pin numbers. Shortly afterwards, the appellant submitted a list of 45 properties…
>
> As City staff discussed with the appellant, there are publicly-available records in respect of the 45 properties that would show the information required by the appellant…
>
> The appellant did not wish to access the records through the [publicly-available sources], however. Therefore, it was left to the City staff to determine which records held by the City would contain the information that the appellant requires.
>
> City staff then searched the Planning Application files in respect of 3 sample properties from the appellant's list of 45 properties and determined that the responsive records were the Servicing Agreements. These Agreements specify which properties are required to be given to the City of Mississauga by the developer as part of the development process.
>
> …
>
> The appellant, however, denied that these Servicing Agreements were responsive to his request but did not indicate why not.
>
> …
>
> In accordance with Section 24(2) of the *Act*, the City has made genuine and extensive efforts to assist the appellant to identify records that are responsive to his request. However, the appellant is still unable to do so.
>
> …
>
> Instead, the appellant has requested that he view all City files pertaining to the other 44 properties on his list.

The appellant maintains that his request was to have access to all of the various City departmental files in relation to the valley lands and that his request, as clarified during Appeal MA08-151, is incorrect because he did not properly understand the discussion that went on during mediation. He further submits that the servicing agreements identified by the City are not responsive to his request and that the records identified by the City do not contain the information that he is requesting. The appellant also disputes the City's assertion that the requested information is contained in publicly available resources. He states:

> …the Registered Servicing Agreements and the Land transfer [Act] forms are not conducive in providing the requested information. All these documents are authored and the transaction price $2.00 is solely generated by city staff. The value of $2.00 is arbitrary and does not reflect the true value of the lands transferred. There is nothing in these files that assures the appellant that no trade-

> offs or concessions have occurred. When the appellant was given the opportunity to view one development record, it was found that the Registered Servicing Agreement and the Land transfer tax forms, did not account for concessions and trade-offs found.
>
> …
>
> It is very apparent the City, by their Representation Report and through discussions in meetings, is attempting to support their case that all information requested under the provisions of the FOI act is readily available at the Provincial registry. They purport all of the information about city owned lands can be garnered through various sources such as the Ontario Registry Office and their internet website. These assertions are unfounded and misleading…
>
> Considerable time and research has been expended by the Appellant to provide [the City] a list of Greenbelt Floodplain land and their transactional minimal dollar values. The City is incorrect in their assertions that the Servicing Agreements will suffice the Appellant's request for information needed…As evidenced by the Exhibits provided, the necessary information and/or documentation is <u>not</u> held at the Ontario Registry Office, but is contained within various departmental files of the City.

Additionally in his representations, the appellant provides the following explanation about his clarified request:

1. Number of valley land properties acquired by the City.

   The appellant has never requested for a specific number of valley land properties. Appellant actually requested a complete listing City owned valley land together with pending acquisition. To request a number is meaningless and has been taken out of content.

2. The majority of flood plain lands do not have either an address or street number. Note: The City's Exhibits submitted to this tribunal do not have pin numbers, tax roll numbers or addresses. This only serves to further complicate the search for information and is considered to be an attempt by the City to thwart Appellant's request.

3. Non Payment of Taxes on flood plain lands…

   Appellant has always requested the entire files relative to delinquent tax arrears. Frequent requests for one particular case has gone astray…It is apparent that the City has implemented their strategy to acquire, a[t] little or no cost, privately owned flood plain lands by MPAC ascribing highly excessive assessment values on these lands…

4. "Trade-offs/Concessions"

   The Appellant has requested [named City representative], to provide written assurance that no concessions were allowed of any of the submitted lists. He refused even after evidence of concessions. He denied there were contradictions to the City policy.

5. "Flood plain lands given as gifts to the City."

   The City has not provided any information on this frequent transaction. Many owners are confronted and overwhelmed financially by high assessments, and ultimately walk from ownership.

The appellant also submits that the City has chosen to focus only on developmental land acquisitions from the list he has provided. He states:

> What was overlooked is other aspects of the access requests, namely acquisition deals of lands from Tax arrear defaults, donations and purchases of flood prone lands. As explained…the City has the information readily available through their computer data network.

Finally, the appellant submits that he is "… seeking information from the files to the extent that if Appellant located six (6) files where concessions were not involved, this would satisfy Appellant's request."

In its reply submissions made in response to the appellant's representations, the City submits that the main reason the appellant does not accept the records that it has found to be responsive is because he does not accept that the City does not have evidence of trade-offs and concessions. The City states:

> The records do not contain information about concessions or trade-offs because there were/are no such concessions or trade-offs. The Appellant apparently refuses to believe this.
>
> The transfer of flood-prone lands by a developer to the City is part of the development process carried out in compliance with the Planning Act. The City has not experienced resistance by developers to transferring flood-prone land, no doubt because developers cannot build on this land and so it is worthless to them. There are often discussions between a developer and the City about [where] the flood-prone land ends and table land (i.e. land suitable for building) begins.
>
> However once this is agreed on, it is [a] generally-accepted practice in the development industry that the flood-prone land is transferred to the City. This has been the City's experience since Hurricane Hazel destroyed many properties that were then in the flood plains.

> Even if the Appellant continues to believe that the Transfers registered at the Registry Office and the Servicing Agreements are not responsive to his request, the City has no other records that are responsive. The City cannot produce something it does not have.

Finding and analysis

Although the parties have engaged in a protracted discussion about what records are responsive to the appellant's request, the City's fee estimate and interim access decision are limited to only the Planning Department files for the 45 properties identified by the appellant. The parties appear to have settled on these records as a result of their discussions. Based on the parties' representations, I find that the appellant's request was refined to include only the request as clarified during the mediation of Appeal MA08-151. Although the appellant submits that he could not properly hear what transpired during the teleconference mediation of that appeal, I find that the appellant received a copy of the mediator's report and did not dispute the contents of the report. Accordingly, I find that the appellant's request is for the following information:

- Number of valley land properties acquired by the City
- Location of each of the valley land properties acquired by the City and in particular the roll number for each property
- Dollar amount paid by the City for each acquisition.
- Basis for the acquisition: non-payment of taxes, trade-offs, gift

In my view, this request is not ambiguous or unclear. The appellant's clarified request provides sufficient detail to enable an experienced employee, upon reasonable effort, to identify any responsive records, in accordance with 17(1)(b) of the *Act*.

While I am sympathetic to the City's frustration at identifying exactly what constitutes the responsive records, I remind the City that the interim access decision and fee estimate procedure set out originally in Order 81 was designed to remedy problems arising in these cases. The purpose of the fee estimate, interim access decision and deposit process is to provide the requester with sufficient information to make an informed decision as to whether or not to pay the fee and pursue access, while protecting the institution from expending undue time and resources on processing a request that may ultimately be abandoned [Orders MO-1699 and PO-2634].

I will now determine whether the records identified by the City are "reasonably related" to the appellant's clarified request. The City submits that the appellant can either find responsive records publicly through Service Ontario or that the responsive information is contained in the servicing agreement or Land Transfer Act forms for each property which the City has identified as responsive.

While I accept the City's arguments that information responsive to the appellant's request may be available publicly, I note that the City did not deny access on the basis of section 15(a) of the *Act*. Accordingly, the appellant is not required to use these publicly available sources if he chooses to pursue access under the *Act* instead.

Regarding the service agreements and Land Transfer Act forms, I find that these records are "reasonably related" to the appellant's request. I do not accept the appellant's submission that these records are not responsive because they do not contain evidence of trade-offs or concessions. The sample servicing agreements provided by the City (Exhibits G, H, and I) contain information about property to be transferred to the City, including a description about the property and the costs to be borne by the developer. This information is responsive to the part of the appellant's request that asks for the location of valley lands acquired by the City.

The sample Land Transfer Act forms provided by the City (Exhibits B and C) contain information about the dollar amount paid by the City for each acquisition. I find that this is responsive to that portion of the appellant's request that is seeking information about the dollar amounts paid by the City to acquire the lands.

The City also provided Exhibits E and F which set out the City's Greenbelt policies and its corporate policy and procedure on property dedications. This information appears to be responsive to that portion of the appellant's request which seeks information about property that has been gifted to the City.

I agree with the appellant that these records do not contain evidence of or information about trade-offs or concessions. However, in the present appeal, I am not in a position to determine whether the lack of information about concessions or trade-offs is due to deficiencies in the City's search or the fact that such records do not exist. Reasonable search was not identified as an issue in this appeal. Moreover, even if this information did exist, I do not have the authority or jurisdiction to determine whether the City has acted improperly.

I wish to emphasize for the appellant that the City is not required to create a new record if the requested record does not exist. Rather the *Act* requires the City to conduct a search through its existing records for documents which meet the criteria described in the request. This point is set out in Order MO-1989 where Adjudicator Frank DeVries stated:

> It is clear from previous orders that an institution is not, in most instances, required to create a record in response to a request…[O]rders M-436, MO-1381 and MO-1396 confirm that "…as has been established and recognized in many previous orders, section 17 does not, as a rule, oblige an institution to create a record where one does not currently exist." (Order MO-1422) Generally speaking, an institution's "…only obligation is to locate records which already exist and which contain the requested information" (Order M-436).

I agree with the reasoning in these orders and find that the City is not required to create a record assuring the appellant that there has been no "trade-offs or concessions" between the City and property owners. The City is only required to search for records which may contain this information.

Accordingly, based on my review of the representative sample records provided by the City, I find that these records are responsive to the appellant's request.

I will now proceed to consider the City's fee estimate.

FEE ESTIMATE

Where the fee is $100 or more, the fee estimate 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 823, 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.

More specific provisions regarding fees are found in sections 6, 6.1, 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.

Representations

In support of its fee estimate, the City provided the following explanation of its fee, which it states is based on the 4-step process:

- Look up property on Assessment Roll to determine whether it was part of a development process by indication of a Development Plan number;

- If there is a Development Plan number, search for file listings on the City's OmniRIM database and request the files from the departments identified as holding the files;

- If there is no Development Plan number, contact both Legal Services and Realty Services to search their database and file listings for responsive files and request the files;

- Review all files for any personal information of identifiable individuals and any other exemptions that may apply to the records;

- Copy any responsive pages identified by the Appellant during his review.

  The estimated time for the first two items is 15 minutes per property. The estimated time for the third item is 1 hour per property. The estimate for the fourth item is 2 pages per property.

The City states that its fee estimate for search was based on the actual time it took to search for responsive records that relate to three sample properties.

Regarding its preparation fee, the City explains that the sample planning application which the appellant reviewed at their office was 2000 pages of record. The City considered that some planning applications will have fewer records and thus require less time. Accordingly, in its estimate, the City reduced the preparation time for 1 hour per property.

Moreover, the City states that the fee estimate is high because of the large number of files involved and the appellant's request to view all of the City's files for the 44 properties identified by the appellant. The City submits that the appellant was unwilling to narrow his request to reduce the fee.

The appellant submits that he has received records from other government agencies where no fee was levied for the records retrieval or severance. Further the appellant submits that he has received records from the City in the past without charge. Finally, regarding the issue of the fee estimate, the appellant states that he was willing to reduce the number of files requested to 20. The appellant also disputes the City's claim for fees relating to preparation of the records for disclosure. He states:

> These files are not police or health matter issues. These are public files affecting the public. [The City] is using the privacy section to withhold information. None of these Public files would contain any information that infringe on any persons privacy issues. Has nothing to do with health, crime or personal issues.

The appellant also argues that the City purposely chose sample files that were disproportionately large in order to inflate its fee and that the City is using the fee to discourage access.

Analysis and Finding

Based on my review of the appellant's request, the sample records provided by the City and the City's representations, I find that none of the information requested would include the personal information of the appellant.

Search

As stated above, the City's fee estimate includes 11.25 hours required to conduct searches for the information that is responsive to the request in each of the files relating to 45 properties. In its representations, the City refers to searching for the files related to 44 properties. The appellant's submission is that he only is interested in receiving information for 20 of the properties. Based on the representations of the parties, I accept that the appellant is now only interested in receiving information for 20 properties. Therefore, I find that the City's search time should be reduced to include the search time for only 20 properties, as requested by the appellant in his representations.

I further accept the City's representations that both manual and electronic searches would be conducted in various locations and that it would take 15 minutes of search time for each property. Based on 15 minutes of search time for each property, the search time for 20 properties would be 5 hours. Regulation 823 permits $7.50 per 15 minutes of search. Accordingly, the City's fee estimate for search should be adjusted to $150.

Preparation

The City's fee estimate includes 1 hour of preparation time for each of the 45 properties. For the same reasons set out above, I find that the preparation time must be adjusted to only include time required to prepare the records for 20 properties.

Based on the City's representations and the sample records provided, I accept that the City would be required to sever the records in order to prepare them for disclosure because they may potentially contain personal information. I further accept the City's estimate of preparation time based on the sample property application file and that 1 hour of preparation time for each of the properties is reasonable.

Accordingly, the City's fee estimate for preparation time should be reduced to $600 to account for only 20 properties.

Photocopying

The appellant did not make representations respecting the calculation of the City's photocopying fees. The City included a charge of $18 which included 2 pages of photocopying for each of the 45 properties. Again, I have adjusted the photocopying charges to only include charges for 20 properties. The City's charge of .20 per page is allowable under Regulation 823 and I find that the City's fee estimate for photocopying is now reduced to $8.00.

In conclusion, I have adjusted the City's fee estimate to take into account the appellant's request for information related to 20 properties. The City's fee estimate is now $150 for search; $600 for preparation time and $8 for photocopying, for a total of $758.00.

Before I leave this issue, I also wished to briefly address the appellant's argument that because the information he is seeking is "public" information, he should not be charged a fee for their

retrieval and access. The fee provisions of the *Act* require an institution to charge fees for access to records unless an institution waives the fees under section 45(4) of the *Act*. The appellant's public records argument is not one of the circumstances listed in section 45(4). However, the appellant may wish to consider making a fee waiver request to the City following this appeal if he can establish the grounds set out therein, and in the Regulations.

PRE-EXISTING ACCESS

The appellant submits that the City should not be allowed to charge a fee for the responsive records as he was previously granted access to similar records at no cost. Section 50(2) of the *Act* states:

> This Act shall not be applied to preclude access to information that is not personal information and to which access by the public was available by statute, custom or practice immediately before the 1st day of January, 1991.

The appellant submits the following in support of his position that section 50(2) applies:

> Enclosed is Exhibit #10 of one particular thirty-five (35) page City file given to me in the mid '90's. At that time, the City's policy was that all requested development files were readily made available to the public with copies provided at no cost…. This is the first time Requester has been refused access to search any development files and/or to acquire copies.

Exhibit #10 is a series of pages relating to severance applications by businesses and the decisions by the Land Division Committee. I note that none of these pages contain records that are actually similar to the records identified by the City as responsive in the current appeal.

On the issue of pre-existing access, the City submits that section 50(2) of the *Act* does not apply. The City states:

> The City has not denied access to responsive records and is not charging a fee for access. Instead, in our interim decision we indicated that we would need to review all records in the files relating to the 44 properties in order to remove those that contain personal information. This is a mandatory exemption under the *Act*, as indicated in Section 14. In addition, the files may contain other types of information that are exempt under the *Act* which would need to be removed.
>
> …
>
> The *Planning Act* as amended by Bill 51, now contains a clause that makes material required to be provided to the City available to the public:

Information and material to be made available to public

> **1.0.1** Information and material that is required to be provided to a municipality or approval authority under this Act shall be made available to the public. 2006, c. 23, s. 2.

Prior to the implementation of Bill 51 in January 2007, the City was not required to make this information and material available to the public. Nevertheless, the City allowed members of the public to make arrangements with the Planning Department to view certain Planning application records during the approval process. Fees could be charged under the City's by-laws.

Currently, under the City's General Fees and Charges By-Law 460-07 (Exhibit J), the City's fee for photocopying is $0.50 per page and the fee for locating/researching/preparing documents is $30 per hour.

However, the fee estimate in the City's interim decision is not based on the City's By-Law but on the fees prescribed by the *Act* and Regulation 823, R.R.O. 1990.

Finding and analysis

Based on my review of the parties' representations, I find that section 50(2) of the *Act* does not apply in this appeal. While I accept the appellant's arguments that similar records may have been disclosed to him in the past for no fee, section 50(2) states, in part, that the "Act shall not be applied to preclude access to information that is not personal information." In the present appeal, the City is not denying access to the records at issue by charging a fee for severing personal information. In Order MO-1250, former Senior Adjudicator David Goodis dealt with a similar argument and found:

> The appellant submits that section 50(2), which is designed to preserve access which pre-existed the *Act*, applies here. In my view, the main purpose of this section is to ensure that access is not denied to records to which access was normally available by custom prior to the *Act* coming into force. The Town has not denied access to any records at this stage. By applying the mandatory fee provisions of the *Act*, the Town is not using the statute to preclude access within the meaning of section 50(2). The Town has no choice but to apply the fee provisions to requests made under the *Act*. The fact that I have reduced the fee estimate does not alter my view on this point.

I concur with the Senior Adjudicator's reasoning and apply it here. As was the case in that matter, the City has not precluded access to the records by applying the fee provisions of the *Act*.

Similarly, I find that the City's possible application of section 14(1) to deny access to the personal information in the records is also not a denial of access to the records. In Order PO-1717, former Assistant Commissioner Tom Mitchinson found the following dealing with a

similar argument regarding the application of section 63(2) (the provincial equivalent to section 50(2)) for records requested from the Public Guardian and Trustee:

> The purpose of section 63(2) is to make it clear that any practice of routinely or informally disclosing information by government institutions prior to the *Act* coming into force should not be encumbered by the creation of the new statutory scheme. Exemption claims, with few exceptions, are discretionary in nature, and this section recognizes that information can continue to be disclosed even if it would qualify under one of the discretionary exemption claims. However, section 63(2) also makes it clear that disclosure practices relating to personal information fall outside the scope of this section and must be governed by the formal access procedures and privacy protection provisions of the *Act*.

Accordingly, I find that section 50(2) of the *Act* does not apply to permit disclosure of the records at issue without fee or severance.

ORDER:

1. I uphold the City's fee estimate for the amount of $758.00 only.

Original signed by: December 15, 2009
Stephanie Haly
Adjudicator