



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

ORDER MO-2530

Appeal MA09-151

Town of Smiths Falls



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/Télé: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Town of Smiths Falls (the Town) received three requests, under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), addressed to the Smiths Falls Waste Disposal/Management, Smiths Falls Fire Department, and Smith Falls Water Treatment Centre. In each of the requests the requester sought access to:

Any and all information regarding [a named company], Smiths Falls, from 1999-2006. This includes reports, audits, investigations, incidents, etc. covered under the Smiths Falls or Lanark County area.

The Town advised the requester that access requests sent to the Smiths Falls Waste Disposal Management, the Smiths Falls Fire Department, and the Smiths Falls Water Treatment Centre are all processed by the Town.

The requester wrote to the Town asking for “all copies to be put on writeable CD ROM” which he advised he could send to the Town.

The Town wrote to the requester indicating that due to the large volume of records that it would have to review to locate the responsive records, it required a time extension to respond to the request, pursuant to section 20 of the *Act*.

Subsequently, the Town issued an interim decision in which it stated that some records may be exempt under section 10 of the *Act*, and estimated that there would be a fee in the amount of \$640.00 for processing the request. The Town noted that the fee estimate is based on 21 hours for searching, retrieving, scanning and processing the records onto CD ROM (21 hours at \$7.50 per 15 minutes and \$10.00 for the CD ROM).

The requester, now the appellant, appealed the amount of the fee estimate.

During mediation, the Town confirmed that its fee estimate letter did not address the request for records relating to the named company with respect to Waste Disposal/Management. The Town’s Freedom of Information Coordinator advised that she verbally informed the requester that the Town does not have any records pertaining to Waste Disposal Management for the named company as the Town does not pick up waste at industrial or commercial properties. It was later clarified that Waste/Disposal Management pertains solely to garbage collection for residential buildings, but that records relating to sewage or any type of contamination would be found at the Water Pollution Control Plant. The requester was advised that should he wish to obtain access to these types of records, he should submit a new request to the Town.

With respect to the fee estimate, the mediator asked the Town to provide the appellant with a detailed breakdown of how it arrived at the fee of \$640.00.

The appellant subsequently indicated that he now wished to obtain access to responsive records dating back to 1988 or 1989. Accordingly, the mediator asked the appellant to submit his request, in writing, directly to the Town.

The Town accepted the appellant's clarified request and issued a revised interim decision advising that section 10 of the *Act* may apply to exempt some of the records from disclosure, and provided a revised fee estimate for records dating from 1989 to 2006. Specifically, the Town indicated that there would be a fee of \$1379.00 for providing photocopies or \$1560.00 for scanning the information onto CD ROM. The fee estimate includes a breakdown of how the Town arrived at the revised amounts for producing records for each area, namely, the Water Treatment Plant, the Town Hall and the Fire Department. The fee estimate indicates further that it was based on searching a representative sample of records found in each area.

The appellant appealed the amount of the revised fee estimate.

The appellant also stated that he wished to have the revised fee waived on the basis of financial hardship. Accordingly, the mediator advised him that he must submit his fee waiver request directly to the Town and provide evidence of his financial situation. The appellant submitted his request but did not provide documentation to substantiate his request. As a result, the Town did not waive the fee. The appellant is also appealing the Town's decision not to waive the fee.

As further mediation was not possible, the file was transferred to the adjudication stage of the appeal process for an inquiry.

The adjudicator previously assigned to this file began the inquiry by sending a Notice of Inquiry setting out the facts and issues on appeal to the Town, initially. The Town provided representations in response, which the previous adjudicator sent to the appellant along with a copy of the Notice of Inquiry. The appellant also submitted representations.

The appellant attached a number of documents to his representations in support of his request for a fee waiver. The previous adjudicator sent the non-confidential portions of the appellant's submissions, including much of the supporting documentation, to the Town and asked that it respond to the appellant's representations regarding his application for a fee waiver. The Town submitted representations in response.

The file was subsequently transferred to me to complete the adjudication process.

DISCUSSION:

FEE ESTIMATE

General principles

An institution is authorized to charge fees for processing requests pursuant to section 45(1) of 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 section 6 of Regulation 823 (as amended by O. Reg 22/96). This provision states:

The following are the fees that shall be charged for the purposes of subsection 45(1) of the Act for access to a record:

- 1. For photocopies and computer printouts, 20 cents per page.
- 2. For floppy disks, \$10 for each disk.
- 3. For manually searching a record, \$7.50 for each 15 minutes spent by any person.
- 4. For preparing a record for disclosure, including severing a part of the record, \$7.50 for each 15 minutes spent by any person,
- 5. For developing a computer program or other method of producing a record from a 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.

Where the fee exceeds \$25.00, the institution must provide the requester with a fee estimate. Where the fee is \$100.00 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 appeal. A fee estimate of \$100 or more must 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.

[Orders P-81, MO-1699]

This office may review an institution's fee and/or fee estimate to determine whether it complies with the fee provisions of the *Act* and Regulation 823.

Preliminary matter – interim access decision

In his representations, the appellant argues against the application of the third party exemption in section 10(1) of the *Act*. As I noted above, the Town issued an interim access decision to the appellant in which it indicated that section 10(1) would likely apply to some of the records, and provided a brief explanation for doing so in its representations.

The concept of an "interim" access decision to accompany a fee estimate was first discussed in Order 81. In that order, former Commissioner Sidney B. Linden established that an interim access decision may be issued to accompany a fee estimate where it may be unduly expensive for an institution to respond to a request that involves a large amount of records that require a significant amount of search and/or preparation time.

The purpose of the interim access decision and fee estimate is twofold: to permit an institution to meet its obligations to a requester under the *Act* while not putting it to the expense of searching, preparing and making a final access decision for a request for a large number of records and to give the requester sufficient information to make an informed decision on whether or not to pay the fee and to pursue access to the requested records [Orders P-81, MO-1367, MO-1479, MO-1614, MO-1699 and PO-2299]. However, interim decisions are not binding on the head and, therefore, cannot be appealed to the Commissioner [Order 81].

Accordingly, it is premature to entertain any discussion regarding the possible application of section 10(1) to any responsive records in this order.

Should the fee estimate be upheld?

In determining whether to uphold a fee estimate, my responsibility under section 45(5) is to ensure that the estimated amount is reasonable. The burden of establishing the reasonableness of the fee estimate rests with the Town. To discharge this burden, the Town must provide me with detailed information as to how the fee estimate has been calculated in accordance with the provisions of the *Act*, and produce sufficient evidence to support its claim.

The representations submitted by the Town do not provide any details of the fee estimate additional to that provided in its fee estimate decision. The Town notes, however, that the appellant's revised request for records from 1989 to 2006 will require staff to retrieve and search through a large volume of records. In arriving at my decision regarding the fee estimate, I have reviewed the details provided to the appellant in the Town's fee estimate and interim access decision, which I have set out below. As I noted above, the fee estimate was based on a review

of a representative sample of the records. According to the Town’s decision letter, the search for Town Hall and Fire Department records was conducted by the Town’s Freedom of Information and Privacy Co-ordinator (FOIC), and the search at the Water Treatment Plant was conducted by the Water/wastewater Operations Superintendent and Compliance Co-ordinator.

For the records held by the Fire Department the Town provided the following details:

Search was conducted under the address in the property file located in the Smiths Falls Fire Department. Approximately 40% of the sample will be severed in part.

- Number of hours to search the sample: 1 (one) hour
- Estimated number of hours to complete entire search: 3 (three) hours
- Number of pages of responsive records found in the sample: 50
- Estimated total number of pages responsive to the request: 100

Detailed estimate for Entire Search (1989-2006)

To Photocopy:

| | | |
|---------------|--|-----------------|
| Search: | 3 hours search time @ \$30.00 per hour | \$90.00 |
| Preparation: | 40 pages @ 2min/pg = 1.5 hours x\$30.00 per hour | \$45.00 |
| Photocopying: | 100 pages @ \$0.20 /pg | \$20.00 |
| Total: | | \$155.00 |

OR

To Scan to CD:

| | | |
|-----------------|--|-----------------|
| Search: | 3 hours search time @ \$30.00 per hour | \$90.00 |
| Preparation: | 40 pages @ 2min/pg = 1.5 hours x\$30.00 per hour | \$45.00 |
| Scanning to CD: | 2 hours @ \$30.00 per hour | \$60.00 |
| Total: | | \$165.00 |

For the records held by the Town Hall the Town provided the following details:

Search was conducted under the address in the property file located in the Administrative & Planning Services Department, basement storage area and general files. Approximately 15 pages in the sample will require partial or full severances. Electronic Index was searched for relevant documents. By-laws (Example: Site Plan Agreements) are public documents and are not included in this estimate.

- Number of hours to search the sample: 1 (one) hour
- Estimated number of hours to complete entire search: 3 (three) hours
- Number of pages of responsive records found in the sample: 20
- Estimated total number of pages responsive to the request: 45

Detailed estimate for Entire Search (1989-2006)

To Photocopy:

| | | |
|---------------|--|-----------------|
| Search: | 3 hours search time @ \$30.00 per hour | \$90.00 |
| Preparation: | 15 pages @ 2min/pg = 0.5 hours x\$30.00 per hour | \$15.00 |
| Photocopying: | 45 pages @ \$0.20 /pg | \$ 9.00 |
| Total: | | \$114.00 |

OR

To Scan to CD:

| | | |
|-----------------|--|-----------------|
| Search: | 3 hours search time @ \$30.00 per hour | \$90.00 |
| Preparation: | 15 pages @ 2min/pg = 0.5 hours x\$30.00 per hour | \$15.00 |
| Scanning to CD: | 2 hours @ \$30.00 per hour | \$60.00 |
| Total: | | \$165.00 |

For the records held by the Water Treatment Plant the Town provided the following details:

Search was conducted in boxes located in the storage area of the Water Treatment Plant as well as electronic documents. Approximately 50% of the sample will require partial or full severances.

- Number of hours to search the sample: 3 (three) hours
- Estimated number of hours to complete entire search: 16 (sixteen) hours
- Number of pages of responsive records found in the sample: 160
- Estimated total number of pages responsive to the request: 900

Detailed estimate for Entire Search (1989-2006)

To Photocopy:

| | | |
|---------------|--|------------------|
| Search: | 16 hours search time @ \$30.00 per hour | \$480.00 |
| Preparation: | 450 pages @ 2min/pg = 15 hours x\$30.00 per hour | \$450.00 |
| Photocopying: | 900 pages @ \$0.20 /pg | \$180.00 |
| Total: | | \$1110.00 |

OR

To Scan to CD:

| | | |
|-----------------|--|------------------|
| Search: | 16 hours search time @ \$30.00 per hour | \$480.00 |
| Preparation: | 450 pages @ 2min/pg = 15 hours x\$30.00 per hour | \$450.00 |
| Scanning to CD: | 9 hours @ \$30.00 per hour | \$270.00 |
| Total: | | \$1200.00 |

The appellant objects to the Town claiming \$30.00 per hour for search and preparation time. Referring to the average rate of pay for an office assistant as between \$9 - \$15 (as determined through an inquiry at the local job recruitment agency), the appellant believes that the Town is overcharging for these activities.

Search

Under section 6.3 of Regulation 823, the Town is entitled to charge \$7.50 for each 15 minutes (or \$30 per hour) of time spent for manually searching a record.

The Town's fee estimate only briefly describes where the searches were done. With respect to the Smiths Falls Fire Department, the search was conducted under the address in the property file. The search at the Town Hall was conducted under the address in the property file located in the Administrative & Planning Services Department, basement storage area and general files. As well, an electronic index was searched. The Town indicates that the search was conducted in boxes located in the storage area of the Water Treatment Plant as well as electronic documents.

The Town's representations do not provide any additional breakdown of the searches, such as the number of boxes searched in preparing the estimate and the estimated number of boxes to be searched in total. The estimate does not indicate what types of records were searched for in the electronic portion of the searches, nor does it indicate whether any electronic documents were located. The Town indicates that it conducted a search of a representative sample but does not describe how that sample was determined, for example, did it entail a search of records over different years or was only one box searched? There is no breakdown of the different amounts of time that would be required to search through boxes as opposed to electronic records.

Without a breakdown of the specific elements of the search it is difficult to determine whether the estimated search time for locating the responsive records is reasonable. The Town has indicated that it has already spent a total of five hours searching for records in the three locations for a total of \$150. I find that this amount was calculated in accordance with the fee provisions of the *Act*, and will permit the Town to claim this amount. I accept that the Town will be required to conduct additional searches for the remaining records, for which it would likely be able to charge the appellant. However, in the absence of any indication of the amount of information that must be searched and its format, for example, paper or electronic, I find that the Town has not provided sufficient information as to how it calculated its fee estimate for the remaining searches for me to determine whether or not the fee estimate is reasonable in the circumstances. Accordingly, I do not uphold the portion of the Town's search charges over the \$150 for time already spent.

Preparation

Under section 6.4 of Regulation 823, the Town is entitled to charge \$7.50 for each 15 minutes (or \$30 per hour) of preparation time (including severances). As a general rule, this office has accepted that it takes two minutes to sever a page that requires multiple severances [see, for example, Orders MO-1169, PO-1721, PO-1834, PO-1990].

Severing the records

The Town's interim decision estimates that approximately 40% of the records found in the Fire Department, 15 records from the Town Hall and approximately 50% of the records located at the Water Treatment Plant will require severing. The Town has applied the generally accepted estimate of two minutes per page to sever these pages, multiplied by \$30 per hour, which is in keeping with the acceptable fee structure permitted under the regulation. Accordingly, I uphold the Town's estimate of \$510 for the costs associated with severing the records for disclosure. Of course, where pages are fully exempt, or fewer pages require severing, the Town would be required to adjust its final fee for severing these records.

Costs associated with scanning the records to CD

Section 6.2 of Regulation 823 indicates that the cost for providing records on CD-Rom is \$10 for each CD-Rom. I interpret this section as referring to making CDs of machine readable records. The regulation does not specifically refer to scanning paper records in order to provide the information on CD. In my view, this activity is a necessary component of producing the paper records in the format requested by the appellant [see Order PO-2424 for a discussion of producing a record in a version other than as a paper record]. As I noted above, section 6.4 of the regulation provides that an institution may charge \$7.50 for each 15 minutes spent by any person "for preparing a record for disclosure." The Town has applied this fee structure in estimating the costs associated with producing the information on CDs. I am satisfied generally in the approach taken by the Town.

However, there are several discrepancies in the estimate for this activity. I note that the Town indicates that it will require 9 hours to scan 900 pages located at the Water Treatment Plant onto CD, which amounts to 100 pages per hour. However, it estimates that it will require 2 hours to scan 100 pages of Fire Department records onto CD and that it will also require 2 hours to scan 45 pages of Town Hall records onto CD. In my view, such a discrepancy in the calculation is not reasonable. Accordingly, based on 1045 pages of records at 100 pages per hour, I find that a reasonable estimate of the time required to scan the records onto CD would be \$322.50 as opposed to the \$390 it has calculated in its estimate.

This does not end the matter, however, regarding the costs associated with providing the records on CD. In its representations, the Town indicates that records from the Water Treatment Plant from 2002 onward are located on hard drive. This would mean that they are more easily retrievable and would not require scanning in order to transfer the information onto CD. The Town has not provided a breakdown of the number of records that it estimates would pertain to each of the 18 years requested by the appellant. Nevertheless, the Town will not be permitted to charge the appellant for the "preparation" of these records. Rather, the appropriate charge for all records between 2002 and 2006 located at the Water Treatment Plant would be \$10 for each CD required to contain the information. Accordingly, although I accept the estimated cost of no more than \$322.50 for scanning the records onto CD, this amount must be pro-rated by the Town taking into account the number of pages of records from the years 2002 to 2006 that are already located in machine-readable format. For these records, the Town is permitted to charge \$10 for each CD on which the electronic records are contained.

Photocopies

Section 6.1 of Regulation 823 permits the Town to charge the appellant \$0.20 per page to photocopy the records for disclosure. Accordingly, I uphold the Town's calculation of a total photocopying charge of \$209 for photocopying 1045 pages of records, if this is the format ultimately chosen by the appellant.

Fee decision summary

In summary, I find that the Town is entitled to charge the appellant:

- \$150 for searching for responsive records,
- \$510 for severing the records, and
- \$322.50 for scanning the records onto CD, to be pro-rated by the Town taking into account the number of pages of records from the years 2002 to 2006 that are already located in machine-readable format, if this is the format chosen by the appellant, or
- \$209 for photocopying 1045 pages of records, if this is the format ultimately chosen by the appellant.

FEE WAIVER

General principles

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

Section 45(4) provides as follows:

45. (4) A head shall waive the payment of all or any part of an amount required to be paid under subsection (1) if, in the head's opinion, it is fair and equitable to do so after considering,

- (a) the extent to which the actual cost of processing, collecting and copying the record varies from the amount of the payment required by subsection (1);
- (b) whether the payment will cause a financial hardship for the person requesting the record;
- (c) whether dissemination of the record will benefit public health or safety; and
- (d) any other matter prescribed in the regulations,

Section 8 of the Regulation states, in part:

The following are prescribed as matters for a head to consider in deciding whether to waive all or part of a payment required to be made under the *Act*.

1. Whether the person requesting access to the record is given access to it.

...

In the circumstances of this appeal, the Town has indicated that it will grant access to significant portions of the records.

A requester must first ask the institution for a fee waiver before this office will consider whether such waiver should be granted. Under section 45(5), an appellant has the right to ask this office to review an institution's decision not to waive the fee. This office may then either uphold or overturn the institution's decision [Orders M-914, P-474, P-1393, PO-1953-F].

In Order P-474, former Assistant Commissioner Irwin Glasberg found that the appropriate standard to be applied by the Commissioner in reviewing decisions of the head under section 57(4) of the provincial *Freedom of Information and Protection of Privacy Act* (which is equivalent of section 45(4) of the *Act*), is one of correctness. In that same order, former Assistant Commissioner Glasberg also found that the phrase "in the head's opinion" means only that the head of an institution has a duty to determine whether it is fair and equitable in a particular case to waive a fee, and this wording does not affect the statutory authority of the Commissioner and her delegates to review the correctness of that decision.

It has been established in previous orders that the person requesting a fee waiver bears the onus of establishing financial hardship under section 45(4)(b) and must justify the waiver request by demonstrating that the criteria for a fee waiver are present in the circumstances (Orders M-429, M598 and M-914).

Part 1: basis for fee waiver

The appellant submits that he is entitled to a fee waiver on the basis of financial hardship (section 45(4)(b)). In requesting a fee waiver from the Town, the appellant indicated only that he had not been employed since a date in 2006, that he was on medical leave and has had "no physical income for 2008 and 2009." Although the Town requested that he provide more detail, he did not do so at that time.

In its initial representations, the Town asserted that the appellant was notified on several occasions, following his request for a fee waiver, and during the mediation stage of the appeal, that he was required to provide proof to support his waiver claims. The Town states further:

At no time was any documentation/evidence received to substantiate financial hardship, therefore the request for a fee waiver was denied...

The appellant attached a number of personal documents, including income tax returns, financial statements and itemized budget sheets with the representations he made to this office. In his representations, the appellant expressed concern about disclosing such sensitive personal information. The appellant was subsequently given assurances by this office and the Town that his personal information would be used only for the purposes of this appeal. Because of the appellant's concerns, I will refer only briefly to his financial circumstances.

The appellant explained his medical circumstances, which he claims relate to his employment with the named company during the period of time covered by his request. He indicates that he is seeking the information as it "was required by a specialist, in order to justify a proper medical diagnosis and subsequent recovery thereafter."

As I indicated above, most of the personal documents provided by the appellant were shared with the Town and the Town was asked to provide reply submissions in light of this information. In response, the Town stated:

As noted in the Notice of Inquiry and the submissions attached to it, I repeatedly informed the appellant of the procedure to claim financial hardship. The appellant was notified that he would be required to provide proof to support any waiver claims. As well, the Mediator (during the mediation process) notified the appellant that, evidence must be presented to me to substantiate financial hardship. At no time was any documentation/evidence received by myself to substantiate financial hardship, therefore the request for a fee waiver was denied. [emphasis in the original]

The Town chose not to consider the documents provided to it during the adjudication stage of the process.

I do not find the Town's approach to this issue to be reasonable. There is nothing in section 45(4) or the regulation that requires the institution to only consider financial information that is provided to it directly from the requester. In this case, the appellant's financial information was provided during the inquiry stage and a copy of it was sent to the Town for further consideration of this issue. I find that the Town's inflexible approach to addressing the question of the appellant's financial hardship to be contrary to its obligations under the *Act*.

As mentioned above, the requester bears the onus of establishing financial hardship under section 45(4)(b). Generally, to meet the "financial hardship" test to justify a fee waiver, the requester should provide details regarding his or her financial situation, including information about income, expenses, assets and liabilities [see for example, Order P-1393]. The appellant has done so, and after reviewing the representations and the documents submitted by the appellant, in my view, he has provided me with sufficiently detailed financial information to demonstrate that, were he required to pay the estimated fee for the requested record, he would suffer financial hardship as contemplated by section 45(4)(b).

Despite the fact that I accept that payment of the fee would constitute a financial hardship for the appellant, section 45(4) of the *Act* also requires that I consider whether, in the circumstances, it would be fair and equitable for the fee to be waived.

Part 2: whether it would be fair and equitable to waive the fee

Previous orders have set out a number of relevant factors to consider when deciding whether or not a fee waiver is fair or equitable [see Orders P-474, P-890, P-1183, P-1259 and P-1557]. These factors may include:

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

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

With respect to the last factor listed above, it has been established that when reviewing an institution's decision to refuse a fee waiver, this office must be mindful of the Legislature's intention to include a user pay principle in the *Act*, as evidenced by the provision of section 45.

In its initial representations, the Town describes its dealings with the appellant during the request stage, noting that there were some delays caused by the appellant's failure to respond in a timely manner. The evidence on file indicates that the appellant had been ill and/or in hospital during the material times. The Town also indicates that it offered the appellant a mediated solution to the paying of fees, indicating that it offered to waive all fees if the appellant could revise his request to records from the Water Treatment Plan from 2002 onward (noting that this information was retrievable on hard drive), and adds that it was at this point that the appellant revised his request to include all records dating back to 1989. The Town states:

As no evidence of financial hardship was ever produced to me, I do not believe it to be fair or equitable that the taxpayers of the [Town] pay for the extensive amount of staff time that is required to fulfill this request. I believe that given the

untimely responses from the applicant that I acted fairly. As well, in an effort to bring a conclusion to the request as well as save the appellant both the undue stress and cost, I offered to waive all fees if we could agree on narrowing the request. I believe that this was a solution that would benefit all parties involved. However, this was quickly dismissed and a larger scope of documents was requested.

In his representations, the appellant explains why he is seeking the information that he requested. Essentially, he indicates that he was an employee of the named company until his termination. In regards to his termination, he states that he became ill, and while waiting for his WSIB claim to be processed, had his employment terminated. The appellant advises that, as an employee, he was “privity to sensitive issues within the plant.” He submits that, “what went into that plant, had to exit, in various forms, controlled by the federal, provincial and municipal components respectively.” He indicates that he has not been able to return to work due to ill health. The appellant states further that the named company has not been receptive to his requests for information.

Throughout his representations, the appellant has made reference to a number of matters pertaining to his access request, which, in my view, suggest a limited understanding of the manner in which the *Act* operates and the processes involved in making his way through the various stages of an access request and appeal. For example, he comments on his failure to provide financial information to the Town as follows:

I have not refused to provide financial report to the town, as I had not been given a formal written consent by the IPC, to do so, given that my health was not able to immediately proceed with such...

The appellant concludes that he is asking for,

... all information reported by [the named company] to the [Town], for the time period requested...in order to compile and reconfirm a timeline of work information of [the named company], to complete a collection of documentation, currently within my possession. I know, that as a former employee, that I have the right to be concerned that all information reported to the town, by [the named company], was reported in a proper accountable manner, or if reported at all, and that this was done in a fair, truthful, and transparent manner...

Findings

In determining whether it would be fair and equitable to waive the fee in this case, I have considered the manner in which the access request proceeded, as described above. In my view, the delay mentioned by the Town was due to circumstances beyond the appellant’s control and I find that it is a neutral consideration in determining this issue.

The basis for the appellant's request for access to information from the Town appears to relate to his illness and subsequent termination from the named company, and his belief that the records he is seeking will provide information to assist in the diagnosis of his illness and ultimate recovery (both medically and financially). Although the appellant initially requested records dating back to 1999, he revised that request a further 10 years, which covers a period of time that he was employed by the company.

The Town indicates that I should take into consideration that it offered the appellant a mediated solution which would have resulted in the waiver of all of the fees. In this regard, the Town requested that the appellant limit his request to only the Water Treatment Plant for a period of four years. While an attempt to provide a mediated resolution is a factor to consider, if an offer by the institution does not provide the appellant with the information he is seeking, it should not necessarily be considered to be a factor in favour of the institution. If, for example, the appellant is seeking some proof of environmental contaminants that might have a connection to his illness from a time prior to the four year period offered by the Town, the unilateral offer of a time frame would likely not be of any value to him. Apart from offering to conduct a computer search for recent information, there is no evidence before me that the Town sought to narrow the request to records that might be more relevant to the appellant's reasons for requesting them. I do not find the Town's efforts in this regard to weigh heavily in favour of a finding that it would not be fair and equitable to waive the fees.

On the other hand, the evidence submitted in this appeal also does not favour a finding that it would be fair and equitable to waive the fee. The evidence does not suggest that the appellant made any effort to work with the Town. In response to the Town's offer to settle the matter, the appellant revised his request to include an additional ten years of records, without explanation or any discussion with the Town. In my view, the appellant has not made any effort to minimize the impact of his request for the information he seeks. I find the appellant has not worked constructively to minimize the costs and this factor weighs against a finding that it would be fair and equitable to waive the fees.

It appears that the appellant is seeking information from the Town because he has been unable to secure the information he requires from the named company. The necessity of obtaining this information is not clear from the appellant's representations. Although he indicates that it "was required by a specialist, in order to justify a proper medical diagnosis and subsequent recovery thereafter," he does not provide any evidence from his specialist indicating exactly what he is looking for in order to form a diagnosis. The appellant's request is very broad and will require a search through a number of records. I am not persuaded that this cost should be borne by the Town.

I also note that the appellant has indicated that he wishes to obtain CDs of the information, which creates additional costs for the Town. In the circumstances, where paper copies are available at a lower cost, such an uncompromising request does not weigh in favour of a fee waiver.

Although the appellant has satisfied me that paying the fee will cause him financial hardship, I am not persuaded that it would be fair and equitable for the fee to be waived in the circumstances of this appeal.

In arriving at this decision, I have taken into account that I have reduced the fee that the Town is permitted to charge the appellant to a total of \$660 for searching for responsive records and for severing them. In addition I have set out two options for payment for the manner in which the records are provided to the appellant. The appellant is free to choose the method that he wishes, and to pay accordingly.

Given that the costs associated with providing copies of the information to the appellant are significant, an alternative option that the appellant and the Town may wish to consider is to permit the appellant to review the records once they have been severed and to copy only those that he finds relevant to his reasons for seeking them.

ORDER:

1. I do not uphold the Town's fee estimate of \$1379.00 for providing photocopies or \$1560.00 for scanning the information onto CD ROM.
2. I uphold the Town's entitlement to charge the appellant the following amounts for search, severing and providing copies of the records to the appellant:
 - \$150 for searching for responsive records,
 - \$510 for severing the records, and
 - \$322.50 for scanning the records onto CD, to be pro-rated by the Town taking into account the number of pages of records from the years 2002 to 2006 that are already located in machine-readable format, if this is the format chosen by the appellant, or
 - \$209 for photocopying 1045 pages of records, if this is the format ultimately chosen by the appellant.
3. I uphold the Town's decision not to grant the appellant a fee waiver.

Original Signed By: _____
Laurel Cropley
Adjudicator

_____ June 18, 2010