



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

ORDER MO-2492

Appeal MA08-332

City of Vaughan



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NATURE OF THE APPEAL:

The City of Vaughan (the City) received the following request, under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), for access to

1. Any and all Records pertaining to an E-mail sent by [name], Administrative Assistant to the Mayor [name] to [the appellant] on or about September, 2006 to November 13, 2006 in regards to a request for Maps (including Block Maps) from the Planning Department including any and all E-mail chains or including all threads involving other Staff in the Mayor's Office, being [name]-Executive Assistant to [the Mayor], including Staff in the Clerk's Department, being [name], City Clerk and [name], Clerk, Clerk's Department and [name], Director of Development Planning related therein.
2. Any and all Records pertaining to an E-mail sent by [the appellant] to [Administrative Assistant to the Mayor] and/or [Director of Development Planning] and/or [Clerk] on or about September, 2006 – November 13, 2006. This shall also include any and all responses or replies made by e-mail chains and all threads in connection with all of [six named] individuals.
3. Any and all Records pertaining to an E-mail sent by [the appellant] and/or [Director of Development Planning] to GIS Staff in the Planning Department being [name] and or [name] on or about September, 2006 - November 13, 2006. This shall also include any and all responses or replies made by e-mail chain or all threads in that regard.

The City issued an interim decision advising that it would conduct a search for records that relate to "map", "maps", "drawings", "plan", "plans", "block map" and "block plans". The City asked the requester if she wished to add any other phrases as search criteria. The City advised the requester that the estimated fee to process the request is \$4,440.00 (\$3,380.00 for search time of 72 hours and \$60.00 to process the request). The City also advised that a deposit of fifty percent is required before the City would take any additional steps to respond to the request.

The City subsequently wrote to the requester to ask if she could narrow the scope of the request in order to lower fee. The requester responded by sending a three-part suggestion to the City as to how the search should be conducted in order to reduce the search time. The City advised the requester that the estimated fee of \$4,440.00 stands because the records are more than one year old.

The requester (now the appellant) appealed the City's fee estimate in the amount of \$4,440.00.

During mediation, the appellant decided to narrow the scope of her request. She subsequently confirmed in an e-mail that the search should be conducted for the specified e-mails only on the appellant's e-mail IT exchange server account.

The City issued a revised fee estimate in the amount of \$390.00 calculated as follows:

Extract mailbox data from PST file: 2 hours @ \$30.00 /hour = \$60.00

Search extracted data for dates specified: 3 hours @ \$30.00 /hour = \$90.00

Search 1,000 e-mails for responsive records: 8 hrs @ \$30.00 /hour = \$240.00

In its revised fee estimate letter, the City also provided the appellant with a detailed explanation as to how it arrived at the above charges.

The appellant's representative, however, advised that he is not satisfied with the revised fee estimate of \$390.00.

As this appeal was not able to be resolved by mediation, it proceeded to the adjudication stage of the appeals process where an adjudicator conducts an inquiry. I sent a Notice of Inquiry, setting out the facts and issues in this appeal, to the City seeking its representations. I received representations from the City, a complete copy of which I sent to the appellant, along with a Notice of Inquiry. I received representations from the appellant. I then sent a copy of the non-confidential portions of the appellant's representations to the City and sought and received reply representations.

DISCUSSION:

FEE ESTIMATE

Where the fee exceeds \$25, an institution must provide the requester with a 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.

6.1 The following are the fees that shall be charged for the purposes of subsection 45(1) of the Act for access to personal information about the individual making the request for access:

1. For photocopies and computer printouts, 20 cents per page.
2. For records provided on CD-ROMs, \$10 for each CD-ROM.
3. 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.
4. 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

The City submits that the fee estimate was made based on the advice of its Chief Information Officer, who in turn consulted with members of the Information and Technology Management [ITM] Department of which he is the head. He submits that the fee estimate is based on the advice of City staff that are familiar with email and the process of extracting archived email. He states that:

Search

The records in question do not contain the personal information of the appellant... The appellant's name is shown in the records in a professional capacity and not as an identifiable individual.

The records are City of Vaughan electronic mail (email[s]) which are backed up in PST [personal storage folders] format on an annual basis. Any email content

that is more than 12 months old is stored in year-end backup tapes. That means that there is no monthly backup that can be accessed for this access request. An entire year of emails must be searched even though the request is only for a specific time period within the year 2006.

The search methodology used as the basis for the fee estimate is detailed below:

1. In order to locate the specific emails sought by the requester it is necessary to extract the email backup database from PST files. Two hours are estimated to search for the appellant's "inbox" and "outbox".
2. The contents of the PST files then need to be searched for a specific date range (September 1, 2006 - November 13, 2006). The PST files will take approximately three hours to read and compare to the selection criteria (date and word content).
3. Once emails responsive to the time period, content, and location (the appellant's "inbox" and "outbox") have been located, they will be printed by the ITM department.
4. Manual analysis of the extracted content will be required to determine relevance to this access request. Specifically, content that relates to [the appellant] will be sought. Manual analysis will also be necessary to locate records that relate to "maps", "block maps", as well as email correspondence with specified named City employees.
5. The number of emails to be extracted is not known at this time. This fee estimate is based on an estimated 50 days of time span multiplied by 20 emails per day. This results in 1000 emails which are anticipated to be reviewed at a rate of 120 emails/hour. The manual review of extracted content, therefore, is estimated to take eight hours.

The search methodology above results in the following calculation:

Extract mailbox data from PST file: 2 hours at \$30.00/hour = \$60.00

Search extracted data for dates specified: 3 hours at \$30.00/hour= \$90.00

Search 1000 emails for responsive records: 8 hours at \$30.00/hour = \$240.00

Preparation for disclosure

Minimal preparation of records for disclosure is anticipated therefore processing fees have been waived. Photocopy/computer printout fees have also been waived.

The appellant submits that the City does not need to search an entire year of emails when a request is only for a specific time period within the year. She states that the City maintains month end email server tapes. She disagrees with the methodology used by the City to locate specific emails. Instead, she submits that the City is able to locate specific emails by restoring the master backup from tape onto the server, which she claims can take about an hour to two hours. She then claims that the City's Ontrack [data recovery] application system is able to zero in on a particular mailbox and email in a matter of minutes.

In reply, the City submits that:

It is the practice of the City of Vaughan to back up email information at the end of each month and then once at the end of the year. Once the year-end backup has taken place, the month-end backup tapes are overwritten. The year 2006 was no exception. The City of Vaughan, therefore, maintains that a search of the year-end backup tape for 2006 would be necessary to attempt to locate the records at issue in this appeal.

The appellant has made reference to the Ontrack application, which is used by the City of Vaughan. The appellant, however, has not described the process of email extraction correctly. The appellant asserts "the Ontrack application zeroes in on a particular mailbox in a matter of minutes". The Ontrack application actually performs two separate operations, both of which require substantial amounts of time. Ontrack converts the year-end backup tape into a form that is both readable and searchable. This process takes roughly two hours... Ontrack then analyzes the content of the back-up data. The process of analysis is necessary to locate information related to specific users (the restored version of the data is not separated into users, dates, etc.). This process and the subsequent search of data which has been grouped by user are anticipated to take three hours... The process to which the appellant refers, therefore, when she states that "the operator just click on the mailbox (inbox/outbox) that need to be extracted", is actually the product of several hours of processing and analysis. The selection of a particular user's inbox/outbox is a part of the email restoration process, but it is neither simple nor "a matter of minutes".

Analysis/Findings

The City's fee estimate is only for the search time required to locate the responsive records. As stated above, the purpose of a fee estimate is to provide the requester with sufficient information to make an informed decision on whether or not to pay the fee and pursue access to the requested records. In the current appeal, the City's fee estimate was based on the advice of its staff that are familiar with the type and content of the records. The City's search time was charged at the rate prescribed by the *Act* of \$7.50 for each 15 minutes spent by any person, or \$30.00 per hour.

According to the City, the responsive information is stored electronically and searches will need to be done manually and electronically. The City provided specific details of the actual searches that will need to be conducted.

The City has responded to the appellant's claim that it is able to restore the master backup from tape onto the server and thereby reduce its search time. I accept the City's explanation that it is unable to utilize this procedure as the month-end backup tapes for 2006 have been overwritten. The appellant's request was made in July 2008. Therefore, as stated by the City in its representations, the month-end back up tapes would have been overwritten by the time of her request.

I find that the City has placed appropriate reliance on the advice of expert employees in connection with the fee in this appeal and has provided a detailed breakdown of the time needed to be spent to locate the responsive records. I am satisfied that the City's search fee is justified to respond to the appellant's request.

In conclusion, I uphold the City's search fee estimate of 13 hours at \$30.00 per hour, for a total of \$390.00.

ORDER:

I uphold the search fee estimate of \$390.00 provided by the City and dismiss the appeal.

Original signed by: _____
Diane Smith
Adjudicator

January 13, 2010