



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

ORDER MO-2584

Appeal MA10-261

City of Toronto



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NATURE OF THE APPEAL:

The appellant made a request to the City of Toronto (the City) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

On June 19, 2007 I filed the attached access request. The result of the request was [that] 44,700 electronic records and 15,000 archival records were made available. At that time I proceeded with obtaining the electronic records only. Those records were provided on Apr. 30/08. I now wish to obtain the remaining 15,000 archival records.

The appellant's earlier request that he referred to was for the following:

...a complete copy of the "TAXPAYER REPAYMENT ACCOUNT." Taxpayer credit balances are transferred to this account after attempts to notify taxpayers have failed. The City's policies and procedures do not provide direction regarding the management, administration and disposition of credit balances in the Taxpayer Repayment Account.

The City issued an interim access decision which included a fee estimate of \$57,360.00. In the decision, the City indicated that partial access would be granted to the records requested. Specifically, the City stated that access to residential accounts containing the personal information of individual property owners will be denied pursuant to section 14 of the *Act*.

Mediation did not resolve the appeal and the file was forwarded to adjudication where it was transferred to me to conduct an oral inquiry. The only issue to be considered was whether or not the City's fee estimate is reasonable.

In advance of the oral inquiry, I sent a Notice of Inquiry to the City and the appellant setting out the facts and issues on appeal. Both the City and the appellant provided documents that they intended to rely on at the hearing. Specifically, the City provided me with a detailed explanation of its search time estimate and fee estimate. The appellant sent two emails with a total of 19 attachments prior to the hearing.

On November 17, 2010, I conducted an oral inquiry at the office of the Information and Privacy Commissioner/Ontario at 2 Bloor Street East. Present at the hearing was the appellant. Representing the City was the Freedom of Information Coordinator, a representative from the Revenue Department and a City lawyer.

DISCUSSION:

The sole issue to be determined is whether the City's fee estimate of \$57,180.00 should be upheld.

An institution must advise the requester of the applicable fee where the fee is \$25 or less.

Where the fee exceeds \$25, an institution must provide the requester with a fee estimate [Section 45(3)].

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 [Order 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 and 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 [Orders P-81 and 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.

The City's fee estimate predominantly relates to the fee for search and is broken down as follows:

Total Estimated Search Time:

Manager: **6+ hours** of programming
Supervisor: **5 hours** of instruction, training and review

Clerk:

- i) Time spent in determining records which relate to non-residential accounts (i.e. accounts for which information may be disclosed)
2 staff at 10 hours each = **20 hours**
- ii) Time spent locating/verifying/producing responsive records for non-residential accounts (30 minutes per account, based on sample conducted for 6 accounts)

15,000 records in total x 25% (estimated percentage of non-residential to residential properties) = 3,750 records @ 30 minutes / record = **1,875 hours**

Total: 1,906 hours

At the start of the hearing, the City emphasized that its earlier fee estimate identified 15,000 archival records and was based on an estimate of the number of responsive records that existed in an archival format for the period of 1995 to 1997¹. As the appellant, at that time, decided to only proceed with access to the 44,700 electronic records², the City did not take any further steps to search for or compile the 15,000 archival records. Further, the City emphasizes that the amount of 15,000 was just an estimate provided as the number of records that may exist in archival format.

The City explains that the Taxpayer Repayment Account consists of monies that could not be refunded to taxpayers (due to an overpayment of taxes by the taxpayers) and after some time a balance was created. The City is unable to identify which money is tied to what property, unless the taxpayer makes a claim for a refund.

In support of the search portion of its fee estimate, the City submits that the archival records do not exist in an accessible format due to the age of the records. The information responsive to the appellant's request is located in multiple and disparate sources including:

- Paper records stored in boxes in the archives.
- Microfiche records
- Electronic records which consist of the secure storage formatted information of the pre-amalgamated city tax databases.

The City notes that before amalgamation in 1998, each municipality had its own tax database. Once amalgamation occurred, the information on these databases was migrated for storage. However, the method of storage was such that the information was not rendered into a searchable format capable of being manipulated.

¹ The 15,000 archival records were identified by the City in response to the appellant's earlier request for a copy of the Taxpayer Repayment Account. The City's decision letter identified 44,700 electronic format records as well, for which the appellant pursued access and paid the requisite fees.

² These are records on the City's current tax billing system for information for the period of 1998 to 2007.

Further, the City submits that in order to locate all the information requested by the appellant, including the municipal address, roll number, amount owing to the taxpayer, last known address of the property owner and name of last known property owner, the City would have to search the records and then cross-reference the information with other records to find the responsive information, as one particular record would not contain all the responsive information. The City states, in its fee estimate:

As [the] records related to this request are not immediately accessible in a reproducible format, this information will have to be compiled through a number of methods, including a custom-designed report to extract the information from Revenue's electronic property tax billing system, retrieval of historical information from archival electronic records, and manual searching of both archival and current paper files and records.

...

The records will be extracted from Revenue's electronic property tax billing system, from archival billing applications (Document Direct format), in paper files that are located both within the Division, and at the City's archival records storage centres.

Finally, the City submits that the information in the City's archival records storage centres is not organized in a meaningful or searchable manner, as this information would have been packed and stored by the pre-amalgamated municipalities in different manners based on differing criteria.

In order to arrive at its fee estimate the City advised that it searched for a representative sample of records which included six non-residential accounts. The City notes in its fee estimate that it distinguished residential and non-residential accounts, as it has determined that residential accounts would not be disclosed given the privacy implications.

The appellant did not dispute the City's search time. The appellant's main argument is that the City, and not the requester, should bear the expense of searching for the information and compiling it into a record. The appellant provided evidence that the Auditor General recommended that the City, and in particular the Director of Revenue Services, take steps to:

Establish policies and procedures for the administration, management and disposition of taxpayer credit balances included in the Tax Repayment Account.³

The appellant suggests that if the City had undertaken to do this work, then the fee estimate to him would not be so large and that the task would be funded from the City's coffers.

³ Document entitled, "Property Tax Appeals and Refund Processing" dated February 28, 2007 (document 8 of the appellant's submissions).

The appellant also makes the argument that he is not asking for verifiable information⁴ and he disputes the necessity of the City undertaking this step in the process. Further, the appellant submits that it is not feasible for the City to have the pre-amalgamation property tax information stored in a database that cannot be searched or manipulated.

In response, the City submits that it currently has processes and procedures in place for the administration, management and disposition of taxpayer credit balances in the Tax Repayment Account. However, these processes relate to data that is post-amalgamation or from 1998 to the present time. The City further submits that there is nothing in the Auditor General's report that suggests that the recommendations related to the pre-amalgamation taxing information. The City emphasizes that, without the appellant's request, it has no independent reason to compile the pre-amalgamation information into a record. The City does not have a direction from Council, policy documents, or a recommendation from the Auditor General to do so.

The City also provided an explanation as to why its pre-amalgamation storage database is not easily searchable. The City submits that the data in the former billing systems (which were database systems that are no longer on-line) was written to flat files. Essentially, this means that an image of the data that existed at a particular point in time was captured for storage. This data, or flat image, is not capable of manipulation in this format. Hence, the pre-amalgamation tax information exists as a collection of image files in a system called Document Direct View.

On the issue of providing verifiable information, the City submits that the appellant has asked for a municipal address or roll number linked to an amount owing from the Taxpayer Repayment Account. The City says that it is aware that this information will be used by the appellant to attempt to have this money reimbursed to the property owners. The City emphasizes that as it is aware of the use which the record will be put to, it will not produce an unverifiable record and it will undertake to make sure that the information in the record is true. And in any event, the City submits that the search time for the responsive information would remain unchanged even if the amounts owed were not verified.

Based on the information provided by the parties, I find that the City's fee estimate is reasonable under the circumstances. The appellant accepted that the City will have to undertake all the steps listed in its fee estimate to locate and compile the responsive record. He takes issue with the fact that he must pay for this exercise and that the City's record-keeping systems require an enormous undertaking to locate the records. I remind the appellant of the user-pay principle established in the *Act* that requires that requesters should be expected to carry at least a portion of the cost of processing a request unless it is fair and equitable that they not do so. The fees referred to in section 57(1) and outlined in section 6 of Regulation 460 are mandatory unless the requester can present a persuasive argument that a fee waiver is justified on the basis that it is fair and equitable to grant it or the *Act* requires the institution to waive the fees [Order PO-2726]. In the present appeal, the appellant did not request a fee waiver, and furthermore, he has not provided me with sufficient evidence to suggest that the City's fee estimate is unreasonable and

⁴ The appellant argues that the verification process adds unnecessary time to the fee estimate and could be done by him once he has received the responsive information.

ought to be reduced. In addition, the appellant did not suggest methods to reduce the fee estimate or propose a strategy to narrow his request.

While I am sympathetic to the appellant's arguments that the City should have undertaken the work to establish a record linking the balance in the Taxpayer Repayment Accounts to actual properties or roll numbers for the pre-amalgamation tax information, I do not have the authority to compel the City to complete this task; nor do I find it a relevant argument on the issue of whether the City's fee estimate is reasonable in the circumstances.

Accordingly, I find the City's fee estimate of \$57,180 to be reasonable and I dismiss the appeal

ORDER:

I uphold the City's fee estimate to be reasonable.

Original Signed By: _____ December 20, 2010
Stephanie Haly
Adjudicator