



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

# **ORDER MO-2597**

**Appeal MA10-83**

**City of Ottawa**



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## NATURE OF THE APPEAL:

The appellant made a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the City of Ottawa (the city). The request was for access to records pertaining to two particular motions before city Council, as well as information pertaining to the process that led to the decision to implement one of these motions. The appellant provided examples of the types of records he was seeking, specifying a timeframe of July 1, 2007 to the date of his request.

The city responded to the appellant with an interim decision and fee estimate of \$810.00. The city requested that the appellant pay a 50% deposit in order to proceed with the request. The appellant appealed that decision.

During mediation, the appellant submitted a fee waiver request to the city. The city denied the fee waiver request stating that, "The City deems the fees estimated for search, preparation and photocopies appropriate in this circumstance." The appellant did not agree with this decision, and he advised the mediator that while he is not relying on any of the provisions in section 45(4), he believes that in the spirit of transparency, a fee waiver should be granted.

Also during mediation, the appellant narrowed the scope of his request, stating that, "Wherever [the words] councilors or councilor's appears in my original request, they should be amended to read: [two named councilors]."

The city subsequently issued a new fee estimate in the amount of \$610.00. This fee was broken down as follows:

- 1100 photocopied pages - \$220.00
- 10 hours of search time - \$300.00
- 3 hours of preparation time - \$90.00

The city advised that it had based its estimate and interim decision on a similar request received and processed in the past. In that request, some exemptions applied to the responsive information. Therefore, the city determined that in the present request the following exemptions could apply to some or all of the information in the responsive records: sections 7(1)(advice and recommendation), 11 (economic or other interests), 12 (solicitor-client privilege) and 14(1) (personal privacy) of the *Act*.

As mediation did not resolve the appeal, the file was moved to the adjudication stage of the appeals process where an adjudicator conducts an inquiry under the *Act*. During the inquiry into the appeal, I sought and received representations from the city and the appellant. Representations were shared in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*.

## **DISCUSSION:**

### **FEE ESTIMATE**

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].

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, 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 submits that its fee estimate was prepared with the advice of knowledgeable city staff who are familiar with the type and content of the responsive records. The city had processed a similar request in the previous year regarding the approval process of a proposed name for a city street.

Based on the work that was required for the earlier search, the city submits that in the present appeal, the search will include a manual search for hard-copy and electronic records and that:

The majority of the 10 hours search time was based on the estimated large volume of records that were created by or received by the City Clerks department...The 10 hours search time also reflects the estimated time required for City Staff and two Councillors' assistants to search for all manner of records including informal notes and correspondence between the public staff/Councillors that were in any way related to this process.

Further, the city also explains that the search for records is made more complex and time-consuming by the appellant's specified time period. The city submits that the appellant's request is for records between July 1, 2007 and January 22, 2010. During this time period, the city explains that it had two different approaches to the naming of city streets. As a result, the responsive records relate to both the initial and later approach taken by city council on this issue

The city submits that the three hours of preparation time is exclusively the time required to sever the records. The city notes that it set out the possible exemptions that may apply to the records in its interim access letter and anticipates that severing 1100 pages of record would take 2 minutes per page. The city argues that the three hour estimate is a conservative and reasonable one<sup>1</sup>.

Finally, the city notes that the fee estimate provided is a revised fee estimate as the appellant has narrowed his request. Thus, the estimate was revised downwards by 5 hours less search time, 100 fewer pages of responsive record and 1 hour less preparation time. The city concludes that its fee estimate has provided the appellant with sufficient information to make an informed decision as to whether he should pay the fee and pursue access to the records.

The appellant submits that the city was unhelpful in making suggestions on how he might reduce the scope of his appeal to reduce the fee estimate. The appellant states that when he limited the scope of his request to include only 2 councillors and not the original 23, he expected that the fee estimate would be greatly reduced. Instead, the fee estimate was only reduced by about 25%. The appellant also submits that he is unable to understand why the search should take so long. He states:

This request concerns only one narrow and very specific issue, the two 'blades' that were posted on [named street] at the corners of [named streets]. Thus I find it somewhat puzzling that any search could take copious hours to perform when staff should be looking for one very specific file in each of the offices of the two councillors and the Deputy City Clerk who was ordered by Council to conduct public consultations.<sup>2</sup>

In response to the appellant's representations, the city submits that the bulk of the responsive records are held within the city clerk's department. The city states:

The analyst disclosed to the appellant that the ward Councillor and the Councillor who brought the motion held most of the responsive records that were in the possession of elected officials. This is reflected in the high number of estimated pages. The City submits that the search time was accurately adjusted downwards due to the large volume of material in multiple formats that [stretch] over an extended period of time.

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<sup>1</sup> The city says that if you do the calculation of 2 minutes per page then the city is only claiming preparation time for 90 of the estimated 1100 pages of record. The city must charge \$7.50 for each 15 minutes of preparation time. If the preparation takes 2 minutes per page as estimated by the city then the city could charge \$1100 for its preparation time.

<sup>2</sup> The appellant and city use the term "blades" to mean the street signs.

In support of its fee estimate for search and preparation of the records, the city enclosed a fee estimate for a similar request involving a public process where the records consist of communications amongst councillors, city staff and the public.

The city's fee estimate is based on the advice of one of its staff who is familiar with the type of records requested and similar requests received in the past. The appellant's revised request was for the following information:

Information pertaining to [two motions] as well as information pertaining to the process that led to the discussion to implement [one motion] in the form of the [named] blades proposed for [named street].

Information includes, but is not limited to, any of the following in which there is discussion or mention of discussions leading to the above motions and/or their subsequent implementation for the period of July 1, 2007 to January 25, 2010:

- Minutes of any Council Meetings and Committee Meetings in which these issues were discussed
- Memos, letters, e-mails and text messages from or to [named councillors], City Staff, [named councillors' staff] and members of the community
- Records of meetings (including informal notes) involving [named councillors], City Staff, [named councillors' staff] and members of the community which took place within City Hall
- Records (including informal notes and receipts submitted) of meetings of [named councillors], City Staff, [named councillors' staff] and members of the community which took place outside of City Hall, including restaurants, community centres and churches
- Telephone, cell phone, email and text messages, records of any communications by [named councillors], City Staff and [named councillors' staff] with each other or with community members
- Audio recordings of any above-mentioned meetings, telephone or cell phone communications, including voice mails

Based on the city's representations, I find that the search and preparation portions of the fee estimate are reasonable. The city submits that it will take 10 hours of manual search for both electronic and hard-copy records in order to locate responsive records. I find the city's explanation of the locations to be searched, as well as its explanation of the difficulties of the search due to the time period specified by the appellant to be reasonable in the circumstances.

Given the breadth of the appellant's request in both type of records and time period, I find it reasonable that it would take the city the 10 hours estimated to locate responsive records. Accordingly, I uphold the \$300 fee estimate for search time.

I also accept that it will take the city 3 hours to prepare the records for disclosure. Based on the substance of the appellant's request and the fact that responsive records would include information about the interaction with community members, I accept the city's position that the exemptions in sections 7(1), 11, 12 and 14 may apply. Further, based on the estimated number of responsive records, I find that three hours of preparation time is a reasonable estimate, and I uphold the \$90 preparation portion of the fee estimate.

Lastly, I uphold the \$220 photocopying portion of the fee estimate. The city is permitted to charge \$.20 per page of photocopying and with the estimated number of responsive records, I find that \$220 falls within the prescribed fee amounts.

I uphold the \$610 fee estimate for the responsive records.

### **FEE WAIVER**

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. Those provisions state:

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 by the regulations.

8. 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.

2. If the amount of a payment would be \$5 or less, whether the amount of the payment is too small to justify requiring payment.

The fee provisions in the *Act* establish a user-pay principle which is founded on the premise 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 45(1) and outlined in section 8 of Regulation 823 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].

A requester must first ask the institution for a fee waiver, and provide detailed information to support the request, before this office will consider whether a fee waiver should be granted. This office may review the institution's decision to deny a request for a fee waiver, in whole or in part, and may uphold or modify the institution's decision [Orders M-914, P-474, P-1393, PO-1953-F].

The institution or this office may decide that only a portion of the fee should be waived [Order MO-1243].

In support of his fee waiver request, the appellant submits that the fee should be waived as the records ought to be disclosed to him in the spirit of openness and transparency, especially:

- As a citizen, he is entitled to information regarding decisions that affect the community especially with regard to the purposes of the *Act* and transparency.
- The need for openness and transparency in the "blade" policy on the part of City council

The appellant also argues that dissemination of the records would benefit public health or safety under section 45(4)(c) of the *Act*. The appellant states:

...the city claims that there was "...never a possibility of a public health or safety issue arising from the posting of an honorific sign." They do not cite any study that was done to support this claim. I find this unsupported claim to be lacking in credibility, given the City of Ottawa's strict enforcement rules regarding roadside signs that are not consistent with its blue and white standard. As the 'blades' are red, green and white and are in conflict with the official street signs at the intersections where they are posted, they are just as likely to distract and confuse drivers as the signage which by-law officers have been instructed to target.<sup>3</sup>

Further, the appellant argues that the media dissemination of the information is likely to be biased and thus the public cannot rely on the media to properly disseminate the information.

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<sup>3</sup> Notably, the appellant also does not provide a study to back-up his claims.



On the grounds of financial hardship in section 45(4)(b), the appellant submits that he should not have to pay for the records. The appellant states:

Fair and open government should not require one to open one's wallet to obtain information that should be provided freely and without prejudice. I pay taxes without complaint to all levels of government for the services that they are supposed to provide. I should not have to pay again to find out if the government is doing its job properly when they have steadfastly refused to provide answers to my simple request for information about the process behind a decision that affects the safety and well-being of my community.

Finally, the appellant refers to the "similar request" the city has referred to in its representations as justification for its fee estimate. The appellant notes that the city refunded all the fees paid in that request to the requester and asks that the city waive the fees in his appeal, as well. The appellant states, "If the previous case has served as a model for the present one, then all fees should likewise be waived in my case."

In denying the appellant's fee waiver request, the city submits that the appellant did not provide any information supporting the grounds for fee waiver in section 45(4) of the *Act*. Also, the city submits that it would not be fair and equitable in the circumstances to grant the fee. Finally, the city argues that a fee waiver would shift an unreasonable burden of the cost from the appellant to itself.

In response to the appellant's representations on a fee refund being granted in a similar request, the city notes that it did not rely on the similar request in the context of its decision to deny the fee waiver. Instead, the information about the similar request was provided in the inquiry as information about how the city arrived at its fee estimate. The city explains:

This decision to refund fees was based on factual circumstances that do not apply in this appeal, including the public health and safety factor. Prior to a residential street being renamed, the City undertakes a review of the name to ensure that the name will not create obstacles for emergency response by police, paramedics, and fire services. The Head in his letter dated August 9, 2010 specifically recognized the fact that the requester raised issues about "difficulties in 9-1-1 situations". Calls to 9-1-1 that are dropped due to confusing street names can present health and safety issues.

In this appeal the subject matter involves the City placing on a light standard located on a major City street a distinct red, white and green sign below the existing standard blue and white street name sign. The former City of Ottawa has placed honorific signs in this manner in Ottawa's Little Italy and Chinatown districts. There is no change to the street name that would otherwise have the potential to trigger a public health or safety issue. As widely reported in the media, some members of the public opined at public forums that the new signs were distracting, that they should be moved to another neighbourhood, and/or that street signage honouring peoples of a particular origin were not desirable. The

City respectfully submits that it is highly remote and speculative that a safety issue would arise and that it is not reasonable to conclude that this request will provide a meaningful contribution to the development of understanding of an important public health or safety issue or disclose a public health or safety concern.

The appellant's fee waiver request is based on two grounds. First, he argues that in the interests of transparency and open government, he should be granted a fee waiver. The second ground is based on section 45(4)(c), that dissemination of the record will benefit public health and safety.

As stated above, the fee provisions in the *Act* establish a user-pay principle which is founded on the premise 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 45(1) and outlined in section 8 of Regulation 823 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].

Section 45(4) of the *Act* requires that the head must consider the grounds listed therein and then consider whether it would be fair and equitable to grant the fee waiver. I am prepared to consider the appellant's openness and transparency argument in support of his contention that it would be fair and equitable to grant a fee waiver in the circumstances. However, I find that the appellant has not established the initial grounds for a fee waiver required in section 45(4). The appellant does not claim that he would suffer financial hardship if he were required to pay the fee as in section 45(4)(b); nor did he provide sufficient evidence to substantiate his public health or safety argument in section 45(4)(c).

As the grounds for fee waiver must be established before I consider whether it would be fair and equitable to grant a fee waiver in the circumstances, and the appellant has not established any of the grounds for fee waiver, I uphold the city's decision to deny the appellant's fee waiver request.

**ORDER:**

1. I uphold the City's fee estimate of \$610.00
2. I uphold the City's decision to deny the appellant's fee waiver request.

Original signed by: \_\_\_\_\_  
Stephanie Haly  
Adjudicator

February 10, 2011