

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER MO-2733

Appeal MA11-413

Township of Severn

May 14, 2012

Summary: The sole issue in this appeal is whether the fee estimate charged by the township for access to records is in accordance with the requirements of the *Municipal Freedom of Information and Protection of Privacy Act*. The township's fee estimate is upheld, in part. Fees for photocopying all of the records and for preparing 316 pages of records are upheld. The fee for search time is reduced.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 45(1)(a), (b) and (c), *Regulation 823*, section 6.

OVERVIEW:

[1] The order disposes of the issues raised as a result of a fee estimate issued in response to a request made to the Township of Severn (the township) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), for the following information:

...

Namely, all files pertaining to the tax arrears sale of the property address known [specified property] recently put up for tax arrear on non payment and auctioned off to a successful bidder on May 31, 2011 and all related documents related to the decision to withdraw the sale. Inclusive of all related documents of the Tax treasure's itemized tax arrears calculations and itemized financial reasons/figures for the

grounds of cancelling the auction sale due to the grounds of stated financial stated loss to the city. Also, all related documents (checks, statements) be produced showing that the owner or willed to persons or whoever had paid the tax arrears.

...

[2] The township issued an interim fee estimate to the requester in the amount of \$382.20, advising that upon acceptance and payment of a deposit of 50 percent of the fee, it would continue processing the request. The township provided the requester with the following fee breakdown:

Copy of documents (\$0.30 per page)	=	\$67.20
Research and preparation (\$30.00 per hour)	=	<u>\$315.00</u>
Total	=	\$382.20

[3] The requester (now the appellant) subsequently appealed the township's interim fee estimate to this office.

[4] With respect to the fee charged for photocopying each page of the documents, the mediator assigned by this office advised that township that the fee set out in Regulation 823 is \$0.20 per page. The township agreed to correct the photocopying fee and to issue a revised fee estimate. The township subsequently issued a revised fee estimate in the amount of \$598.06 and an interim decision advising that partial access would be granted to the records. In its letter, the township further advised that access to some information would be denied, claiming the exemptions in sections 10 and 12 of the *Act*. The township provided the appellant with a detailed index of 382 pages of records and the following fee breakdown:

Copy of documents 382 pages x \$0.20 per page	\$76.40
Hours of preparation 32 hours ¹ x \$30.00 per hour	\$96.00
Registration of mail	\$132.90
Solicitor fees for review of documents and copying	\$294.76
Total	\$598.06 ²

[5] Upon further discussions with the mediator, the township agreed to remove the legal costs incurred while processing the request. As a result, the township issued a second revised fee estimate³ to the appellant in which legal fees were not charged.

¹ This may have been a typing error and was likely meant to read "3.2".

² The combined figures add up to \$600.06.

³ In this fee estimate, the township advised the appellant that it was now claiming the personal privacy exemption in section 14(1) of the *Act*.

However, the revised fee estimate was changed to \$901.40. The township provided the appellant with a detailed fee breakdown for the following categories of records:

- Tax Sale Registration
- Advertising
- Tendering
- Redeeming History

[6] In order to reduce the estimated fee, the appellant subsequently indicated to the mediator that he was no longer seeking access to the "Advertising" records.

[7] The mediator relayed the above information to the township and also asked that it reassess the calculation of the search fee, which included time spent deciding whether to claim an exemption, compiling the documents, and preparing an index of records.

[8] As a result, the township agreed to reduce the number of search hours to eliminate the time spent deciding whether to claim an exemption, compiling the documents, and preparing an index of records. In addition, as the appellant was no longer seeking access to advertising records, the fees related to those records were removed from the fee estimate. Accordingly, the township issued the appellant a final fee estimate of \$530.60.

[9] The appellant continued to take the position that the fee estimate was excessive. The appellant was informed of his right to submit a fee waiver request, but declined to do so. As no further mediation was possible, the matter then moved to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry. Representations were received from both parties and shared in accordance with the IPC's *Practice Direction 7*.

[10] For the reasons that follow, I uphold the township's fee, in part.

DISCUSSION:

Should the fee or fee estimate be upheld?

[11] Where the fee exceeds \$25, an institution must provide the requester with a fee estimate.⁴

[12] 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

⁴ Section 45(3).

- 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.⁵

[13] 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,⁶ and also assists requesters to decide whether to narrow the scope of a request in order to reduce the fees.⁷

[14] In all cases, the institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated.⁸

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

[16] 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.

⁵ Order MO-1699.

⁶ Orders P-81, MO-1367, MO-1479, MO-1614 and MO-1699.

⁷ Order MO-1520-I.

⁸ Orders P-81 and MO-1614.

[17] 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.

Calculation of fee

[18] The township states that during the mediation of the appeal, it completed most of the tasks required in order to provide an accurate fee estimate to the appellant. The remaining work to be completed is the actual copying of the records and the shipping of the records, the cost of the latter which has yet to be determined, unless the appellant makes arrangements to pick up the records at the township's Administration Office.

[19] The appellant submits that the fees being charged are "very high" for a simple request and that the township is attempting to circumvent the release of the records by charging excessive fees. In addition, the appellant states that all he is seeking is a copy of the reason that the township refused his offer to purchase the property in question.

Search time

[20] With respect to the search time under section 45(1)(a), the township submits that most of the responsive records are retained at its Administration Office. However, as the nature of the records relates to a tax sale, some of the records are retained by its solicitor. Consequently, time was spent reviewing records at both locations.

[21] The township states that in order to organize and prepare the records for release and to provide an itemized list of records to be disclosed to the requester, time was spent sorting the file information into four distinct areas, namely tax sale registration, advertising, tendering, and redeeming history.

[22] The township submits that there was considerable time involved in completing the manual search to ensure that all of the records had been located and categorized for the appellant's review. In addition, the township states that as the records relate to a tax sale file that was not completed, time was spent at its solicitor's office, ensuring that all of those records were included in the preliminary review. In summary, the township submits that the time to search and sort the file was estimated at five hours.⁹ Applying the rate of 30 dollars per hour, the township argues, the total cost for search time is \$150.00.

[23] It appears from the township's representations that the time taken to sort the records into four particular categories was included in the estimate for search time. Section 45(1)(a) only permits an institution to charge for every hour of **manual search** required to locate a record. The type of sorting or assembling described by the township does not fall within the scope of a manual search. Once the manual search has been completed and the records are located, the chargeable costs must be calculated under one of the other categories set out in section 45(1) and only in the amounts prescribed by the regulations.

⁹ This is the search time for records categorized as relating to tax sale registration, tendering and redeeming history, as the appellant indicated he did not require records relating to advertising.

[24] In reviewing section 45(1) and Regulation 823 as a whole, I find that the administrative function of sorting the records is not an allowable cost under the legislative scheme as set out in the *Act* and Regulation, as they currently stand.

[25] Consequently, I find that the search time is excessive and that the township has not provided adequate evidence to satisfy me that the search time was reasonable, as it did not provide a detailed breakdown of the search. However, it is clear that time was expended searching for the records and I will, therefore, allow three hours of search time at a rate of \$7.50 for each 15 minutes, totaling \$90.00

Preparing a record

[26] Section 45(1)(b) of the *Act* allows an institution to charge for the time taken for severing a record,¹⁰ and for a person running reports from a computer system.¹¹ Generally, this office has accepted that it takes two minutes to sever a page that requires multiple severances.¹² The township submits that it located 382 pages of responsive records. Three hundred and sixteen pages of the records require severance pursuant to the exemption in section 14(1) of the *Act*. The township states that the time to sever a record is two minutes per page, or 623 minutes.¹³ The calculated rate, the township states, is \$7.50 for each 15 minutes. Therefore, the township argues, the total cost to sever the records is \$315.00.

[27] I agree with the township, and find that its estimate with respect to preparation time to be reasonable and in accordance with the fee provisions in the *Act* and Regulation 823. Therefore, I will uphold this portion of the fee.

Photocopying

[28] Section 45(1)(c) of the *Act* includes the cost of photocopies, computer printouts and/or CD-ROMs or developing a computer program. The township submits that the cost for photocopying 382 pages at 20 cents per page is \$65.60. Section 6.1 of Regulation 823 permits an institution to charge 20 cents per page for photocopying. Applying the photocopying fee to 382 pages of records, the appropriate photocopying fee is \$76.40, which is more than the fee charged by the township. Therefore, I find that the township's estimate with respect to photocopying to be reasonable and in accordance with the fee provisions in the *Act* and Regulation 823, and I will uphold this portion of the fee.

[29] The township states that shipping costs have not been included in the fee estimate, due to the volume of the records involved and the point of mailing. If the

¹⁰ Order P-4.

¹¹ Order M-1083.

¹² Orders MO-1169, PO-1721, PO-1834, PO-1990.

¹³ 10.5 hours.

costs are high, the township states, it offers the appellant the convenience of picking up the records at the township office in order to reduce costs. I encourage the township to offer this option to the appellant regardless of the amount of the shipping costs.

[30] In conclusion, I uphold the township's fee in part. In particular, I uphold the cost of preparing 316 pages of records and photocopying all of the records. In addition, I uphold the township's estimate for search time, in part, though I have reduced the allowable search time to three hours.

[31] I note that the appellant stated in his representations that he is only seeking the reasons that the township refused his offer to purchase the property in question. This statement appears to be narrower than his original request, which was broad in nature. The appellant and the township may wish to discuss how they might more appropriately address the appellant's interests.

ORDER:

1. I uphold the township's fee of \$380.60 for preparing and photocopying the records.
2. I reduce the search time claimed by the township to three hours for a total of \$90.00.

Original Signed By: _____

May 14, 2012

Cathy Hamilton
Adjudicator