

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3035

Appeal MA13-175-2

Toronto Police Services Board

April 14, 2014

Summary: The police received a request under the *Act* for information relating to all police staff that accessed any and all databases containing information relating to the requester and the reasons for the access for the period of January 1, 2005 to the date of her request. Initially, the police issued a fee estimate of \$420 to process the access request. The requester appealed the fee estimate and requested a fee waiver. The police denied the fee waiver, but reduced the fee estimate to \$240. During the inquiry, the appellant advised that the denial of fee waiver is no longer at issue. This order upholds the police's fee estimate of \$240.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 45(1); *Regulation 823*, section 6.1.3.

Cases Considered: Order P-1296

OVERVIEW:

[1] The Toronto Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the following information:

... Badge #s/ID's/Names of all individuals who have accessed any & all databases related to me and the reasons for those access to my information. [Emphasis in original]

[2] The appellant later clarified that she sought records for the period of January 1, 2005 to present.

[3] The police issued a \$420.00 fee estimate comprised of seven hours of search time and advised the requester that a deposit of 50% is required to continue processing the request. The requester (now the appellant) appealed the police's fee estimate and interim decision and appeal MA13-175 was opened. During the intake stage of the appeal, this office issued a Notice of Inquiry to the appellant and the police to determine whether the police were in a "deemed refusal" situation since an access decision was not issued within the legislated time period of 30 days.

[4] Appeal MA13-175 was resolved by the issuance of Order MO-2881, which ordered the police to complete the search for responsive records and issue a final access decision.

[5] The police issued a decision advising the appellant it would grant partial access to the occurrence reports under her name. The police advised the appellant that certain personal information was withheld under the personal privacy exemptions in sections 14(1) and 38(b) of the *Act*.

[6] With regard to the database information, the police advised the appellant that it would take seven hours for the Information Security Office to produce the records responsive to the request. Therefore, in accordance with section 6.5 of Regulation 823 of the *Act*, the police provided the appellant with a fee estimate of \$420.00. The police advised the appellant that it would only begin to produce the requested information upon receipt of a \$210.00 deposit (50% of the total amount), pursuant to section 7 of Regulation 823. The police also advised the appellant that the Internal Search Records are only retained for five years, in accordance with the Toronto Police Service Record Retention Schedule. As such, the police advised that the period would cover records dating from 2008 to the present.

[7] Following internal consultations, the police issued a revised decision, advising the appellant that the estimated time to retrieve the specified data was reduced to four hours and attached an invoice to their decision describing the fees charged. The police also advised the appellant that full access to the requested information would be granted upon receipt of the full fee of \$240.00.

[8] The appellant subsequently submitted a fee waiver request to the police on the basis that the payment of the \$240.00 fee would cause her undue financial hardship. In response, the police advised the appellant that it denied her fee waiver request because she did not provide the necessary documentary evidence supporting her claim of financial hardship. The appellant appealed the police's fee and fee waiver decisions and this appeal, MA13-175-2 was opened.

[9] During the mediation of this appeal, the appellant claimed that the requested fee is excessive and that no search fee should be charged for records containing her personal information. The appellant also argued that the police's fee decision is inconsistent with its decision to not charge a fee for the release of the occurrence reports.

[10] In response to the appellant's concerns, the police advised the mediator that the fee was calculated in accordance with section 45 of the *Act* and section 6.1 of Regulation 823, which permits an institution to charge a search fee "for developing a computer program or other method of producing the personal information from machine readable record".

[11] After further consultations with its Information and Security Unit staff, the police provided the appellant and the mediator with additional information with regard to the method and process followed for extracting the data requested. With respect to the occurrence reports, the police explained that it does not charge search fees for access to personal information about the appellant and that no photocopying fee is charged when the records amount to less than 25 pages. The police also advised that the conducted search produced a list of the officer's badge numbers, as well as the dates and times they sought access to the information, but not their names.

[12] The appellant advised that her request included the names of the police officers that accessed the database and that this information should be produced. The appellant also inquired whether she could view the records, rather than obtain copies of them. The police advised the appellant that the conducted search did not generate any police officers' names, but agreed to include the names of officers with their corresponding badge numbers in the decision letter. The police denied the appellant's request to view the records, as she has not paid the requested fee.

[13] The appellant advised the mediator that she continues to object to the fee estimate and confirmed that the fee waiver denial is at issue in this appeal. As no further mediation was possible, the appeal was transferred to the adjudication stage where a written inquiry is conducted by an adjudicator. I began my inquiry by inviting the police to make representations in response to a Notice of Inquiry. The police submitted representations that were shared with the appellant, who was also invited to make representations in response to a Notice of Inquiry. In her submissions, the appellant advised that she would no longer appeal the police's denial of her fee waiver request. Accordingly, whether the fee should be waived is no longer at issue in this appeal.

[14] In this order, I uphold the police's fee estimate and dismiss the appeal.

DISCUSSION:

Should the fee or fee estimate be upheld?

[15] Previous orders have established that, where the fee is \$100.00 or more, the fee estimate may be based on either:

- Actual work done by the institution in response 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.¹

[16] The purpose of a fee estimate is to provide the requester sufficient information to make an informed decision on whether or not to pay the fee and pursue access. The fee estimate also assists requesters to decide whether to narrow the scope of a request in order to reduce the fees. In all cases, the institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated.²

[17] The IPC may review an institution's fee and determine whether it complies with the fee provisions in section 45(1) of the *Act* and Regulation 823.

[18] In their representations, the police submit that the fee should be upheld as it would be fair and equitable to do so. The police submit that the \$240.00 fee complies with the fee provisions in the *Act* and Regulation 823. Specifically, the police refer to section 6.1 of Regulation 823, which states, in part:

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

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.

[19] The police submit that the \$240.00 fee is not an estimate, but is the actual cost for producing the records requested as they were ordered by this office to complete the search for responsive records in Order MO-2881. The police state that a staff member from the Information and Security Unit (ISU) conducted the searches, which took four hours to produce the records. The total cost of \$240.00 was then calculated according to section 6.1.3 of Regulation 823.

¹ Order MO-1699.

² Orders P-81 and MO-1614.

[20] In support of its position, the police provided me with a detailed explanation from the ISU that described how the records requested were stored and maintained. The ISU advised that the data request covered a five year period and its staff searched for records respecting the period January 2008 to May 2013. The ISU advised that searches of current, i.e. less than 24 months, online information was requested and responsive information was returned using the audit tool. With regard to the information older than 24 months, the ISU advised that it is archived and the information requested was searched separately and returned to the police by email. The ISU stated that the information is stored by month and by year which results in a longer search time. In response to this request, the ISU advised that it divided the request into two searches: one by name and one by address. The ISU stated that its staff member conducted two searches (one by name, one by street name/address) for the past 24 months of data available online. For the three years prior, ISU staff conducted two searches (one by name, one by street name/address) for each year. After the information was returned, the ISU reviewed and validated it. The ISU staff advised that it was occasionally required to perform additional searches to validate the information.

[21] In her representations, the appellant submits that the fee should not be upheld, as it would not be fair and equitable to do so. The appellant advises that she submitted a similar access request to another municipal police service and a response was received without any request for fee. The appellant also advises that, through some independent consultation, she discovered that the ISU staff should only have had to write a quick command to retrieve the requested data, rather than "develop a computer program", as is required by section 6.1.3 of Regulation 823. Further, with this "quick command", the appellant submits that the search should not take as long as the police estimated that it would take.

[22] Additionally, the appellant submits that the police's responses and correspondence with her and this office have been contradictory, inconsistent and inaccurate. The appellant refers to the correspondence she received from the police regarding the fee and submits that they were inconsistent. The appellant also "questions the integrity of how [the police established] and issued a fee estimate given the vast disparity between their initial \$420 [fee] and the subsequent \$240."

[23] The appellant also raises concerns with regard to the police's "vacillating position on demanding a fee prior to providing access to the information being requested" and still releasing information with their May 1, 2013 decision letter, without receiving the fee or deposit first.

[24] 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.

[25] As discussed above, the police claim that section 6.1.3 of Regulation 823 applies, which states that an institution may charge \$15 for each 15 minutes spent by any person on developing a computer program or other method of producing a record from machine readable record.

[26] Based on my review of the representations and fee estimate decisions provided by the police, I find that the revised fee estimate of \$240.00 is reasonable and is in accordance with the requirements of section 6.1.3 of Regulation 823.

[27] In her representations, the appellant submits that the police improperly charged a fee under section 6.1.3 of Regulation 823 as they should not have needed to "develop a computer program". While I agree that it may not have been necessary to "develop a computer program", based on my review of the police's explanation of the search, I find that the police used another "method of producing the personal information requested from machine readable record". The police's representations described the method of search and the production of the personal information from their current and archived databases and I find that this search falls within the parameters of section 6.1.3 of Regulation 823.

[28] I find support for my finding in Order P-1296, in which Adjudicator Donald Hale considered whether a "production run" of a program to search a database and produce a list of vanity plates in Ontario constituted a process of "producing a record from machine readable record". In that order, Adjudicator Hale found that the computer operator who ran the "production run" was "instrumental in the process of 'producing a record from machine readable records' and the time spent by this individual in preparing for the production run of the necessary program on the mainframe computer" fell within the parameters of the provincial equivalent to section 6 of Regulation 823. Applying Adjudicator Hale's analysis to the circumstances of this appeal, I find that the

ISU staff is in a similar position to the computer operator in Order P-1296 and that the time that the ISU staff spent in preparing the records for production from machine readable record falls within the parameters of section 6.1.3 of Regulation 823.

[29] With regard to the amount of time spent performing the search, previous orders of this office have found that the institution's fee estimate must be based on the actions necessary and the actual amount of time needed to locate the requested records.³ In the circumstances of this appeal, the police clearly identified the work performed in response to the appellant's original request. Given that the police were required to perform a total of eight searches to locate the responsive records, I find that it was not unreasonable to take four hours to complete the searches necessary to locate information responsive to the appellant's request.

[30] Although I appreciate the appellant's frustration with the police, especially in light of their failure to issue an access decision that resulted in Order MO-2881, I find no evidence to suggest that the police's final fee estimate to be unreasonable. The police's final fee estimate dated May 17, 2013 charges \$240.00 for four hours of search time. This figure corresponds with the amount of time the ISU staff advises it took to actually complete the search for responsive records. The police have also demonstrated to me that the fee may be charged in accordance with section 6.1.3 of Regulation 823. Therefore, I find that the police have met their onus of proof with respect to the fee estimate provided to the appellant.

[31] I find that the fee estimate was properly calculated and is in compliance with the requirements of section 45(1).

ORDER:

I uphold the police's fee estimate and dismiss the appeal.

Original signed by: _____
Justine Wai
Adjudicator

_____ April 14, 2014

³ Order PO-3205.