

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-3300

Appeal MA14-268

Township of Ashfield-Colborne-Wawanosh

March 23, 2016

**Summary:** The Township of Ashfield-Colborne-Wawanosh (ACW or the township) received a request pursuant to the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* for access to a large number of records related to a wind energy project. The town issued a fee estimate of \$5,170 and also sought a six month time extension. In this order, the adjudicator upholds the township's fee estimate and also allows the township a time extension of three months from the date of the appellant's payment of the fee estimate deposit.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 45(1), 45(3), 20(1)(a), 20(1)(b), 21.

**Orders and Investigation Reports Considered:** Orders M-1, PO-3151.

### OVERVIEW:

[1] The Township of Ashfield-Colborne-Wawanosh (ACW or the township) received a request pursuant to the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA or the Act)*. The request was narrowed and clarified to seek the following information:

We are requesting ALL reports, records, journals, memos, e-mails, phone logs, phone journals, minutes of meetings (excluding general bi monthly council meetings), phone records, phone messages any billing made by Township to any or all of the entities listed below. Excluding any REA

[Renewable Energy Approval] application binders presented to ACW township staff and councillors and public, but not excluding any cover letters from the entities listed below.

We are requesting ALL of the above for:

ACW Township staff to ACW Township staff,

ACW Township staff to ACW councillor or Reeve or Deputy Reeve

ACW councillor or Reeve or Deputy Reeve to ACW councillor or Reeve or Deputy Reeve

ACW Township staff and ACW councillors or Reeve and Deputy Reeve to any outside entity hired by the township in regards to any entity listed below.

[names of 26 entities] including any and all of the Employees, Staff, directors, managers, lawyers and or any sub-contractors of entities listed above.

The entities above we seeking an FOI [freedom of information] specifically pertaining to the [13 items] in ACW. Including any and all of their Employees, Staff, directors, managers, lawyers and or any sub-contractors of entities listed above. Excluding any REA binders presented to ACW township staff and councillors, but not excluding any cover letters from the entities listed above.

[11 items] including any and all of their Employees, Staff, directors, managers, lawyers and or any sub-contractors of entities listed above.

These entities we are seeking FOI for ANY and ALL activities with the municipality of ACW township for any and ALL reports, records, journals, memos, emails, phone logs, phone journals, minutes of meetings (excluding general bi monthly council meetings) , permits, phone records, phone messages any billing made by Township to any or all of the entities listed above...

We are specifically looking for information on anything to do with wind projects or the companies listed that would work for them. With [name], we could care less about correspondence pertaining to the [name] camp municipal drain that is all public anyway. However, the new drain petitioned for by K2 we would be interested in...

1. We do not want council agendas, agenda packages or minutes of regular council meetings (1st and 3rd Tuesday of each month)

2. We do not want correspondence with members of the public and the council. Unless they are part of the employee staff, director, manager, lawyer or subcontractor of any of the entities listed in the FOI request.
3. Internal correspondence All, with regards to K2 or K1 project as listed in the original FOI request and All people and entities listed in the original FOI request.
4. Plans and reports submitted by proponent that have not been listed on the township's agenda and or in the agenda package. Again excluding any REA binders (K2) or FIT binders (K1). But we are requesting cover letters for these binders if there were any
5. Reports from government agencies, only if these are specifically written for the K2 or K1 project and have not been part of, or been referred to, in the ACW council agenda or agenda package
6. Staff reports only if they are specifically written for the K2 or K1 wind projects and all entities that are working with and or for K2 and K1.
7. Draft reports – only if they are specific to K2 or K1 wind projects and all entities that are working with or working for K2 or K1 wind projects...

We do not want agenda items. If someone is seeking information agendas do not bill us or them. You indicated to us that it was the 2003 to 2006 time frame that was the most arduous to search and more the K1 items.

We are willing to revise our FOI to only K2 items and the time frame of January 01, 2006 to June 13, 2014.

We are requesting a review of the costing on the parameters we have always stated in our FOIC [freedom of information co-ordinator] excluding all the agenda times and personal emails. We will again state that we require NO Correspondence with councillors and members of the public they are personal and everyone is entitled to their own opinion unless that person is, as stated in our FOI, part of the K2 team and/or any listed companies or groups.

[2] After a series of emails between the township and the requester, as well as several revised fee estimates, the township further revised its fee estimate to \$6,200.00.

[3] In its fee estimate, the township eliminated its charges for assembling the

information, time spent photocopying, identifying records for severing and processing third party notices, as well as its contingency for double sided documents or other documents. It also reduced its time extension request to six months (from 12 months), and indicated it is possible that it would release information on an ongoing basis as the review of the files of documents, emails, etc. are completed. The township stated:

The fee estimate is based on the information you are requesting up until the date of your request, which was received at our office on March 20, 2014 less K1 information. You may submit a new request for information post March 20, 2014.

Our revised estimate now does not include estimated time spent for processing 3rd party notices nor time spent identifying records that require severing. It does not include staff time to assemble the information or time spent photocopying.

We have reduced the number of copies of email as we are anticipating a number of duplicate emails copies to more than one staff member. Our original estimate of the documents, contained a contingency for double sided documents and any other documents that might come to light during our in-depth search which were not originally anticipated. This contingency has been deleted from the revised estimate. We are aware that you do not require agendas, agenda packages and minutes of meetings.

*Search*

86 hours @ \$30 per hour \$2,580.00

*Preparation*

86 hours @ \$30 per hour \$2,580.00

Approximately 50 per cent of records will have severances – possibly 2,600 pages @ 2 minutes per page + 86 hours

*Photocopying*

5,200 pages @ \$.20 per page \$1,040.00

[4] The township indicated that if the requester wished to further reduce the scope of his request, a reduction in the fee estimate could result.

[5] The township indicated that the following types of records were identified as

responsive to the request and that the exemptions in sections 10 (third party information), 11 (economic and other interests), 12 (solicitor-client privilege), and 14 (personal privacy) of *MFIPPA* are likely apply to them:

- Agendas, agenda packages and minutes of meetings
- Correspondence between township, proponents, government agencies and members of the public
- Internal correspondence
- Plan and reports submitted by proponents
- Reports by government agencies
- Staff reports
- Draft reports

[6] The requester, now the appellant, appealed the fee estimate and time extension.

[7] During mediation, the appellant indicated that he would like to further narrow the request, with respect to the time period and number of councillors and staff, so as to further reduce the fee estimate and time extension. He indicated he wished to reduce the time period of the records from December 7, 2010 to March 20, 2014. He also wished to narrow the number of councillors and staff with respect to his request to the:

- [Three named councillors]
- Reeve
- Road Superintendent [name]
- Building Superintendent [name]
- Chief Administrative Officer/Clerk [name]
- Deputy Clerk [name]

[8] With a view to possibly narrowing his request, the appellant asked whether the township's use of the term "internal correspondence" in its restatement of his request, included all the items in the first paragraph of his April 8, 2014 email.

[9] The township provided a further revised fee estimate of \$5,170.00, (as per its January 15, 2015 fee estimate) to reflect the cost of providing the information on CD (\$10.00), rather than photocopies (\$1,040.00). The township indicated that its

\$5,170.00 fee estimate was already based on the fact that the majority of materials relate to the 2010-2014 timeframe. The township indicated that it did not know whether there would be any further possible reduction in the fee until its staff actually does the work to process the information request.

[10] As further mediation was not possible, the file was transferred to the adjudication stage of the appeal process where an adjudicator conducts an inquiry. I sought and received representations from the parties in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*.

[11] In this order, I uphold the township's fee estimate in the amount of \$5,170. I also allow the township a time extension of three months from the date of the appellant's payment of the fee estimate deposit.

## **ISSUES:**

- A. Should the fee estimate of \$5,170.00 be upheld?
- B. Should the township be given a six month time extension to respond to the request?

## **DISCUSSION:**

### **A. Should the fee estimate of \$5,170.00 be upheld?**

[12] Where a fee exceeds \$25, an institution must provide the requester with a fee estimate.<sup>1</sup>

[13] 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.<sup>2</sup>

[14] 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.<sup>3</sup>

[15] The fee estimate also assists requesters to decide whether to narrow the scope

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<sup>1</sup> Section 45(3).

<sup>2</sup> Order MO-1699.

<sup>3</sup> Orders P-81, MO-1367, MO-1479, MO-1614 and MO-1699.

of a request in order to reduce the fees.<sup>4</sup>

[16] In all cases, the institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated.<sup>5</sup>

[17] 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.

[18] 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.

[19] 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.

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<sup>4</sup> Order MO-1520-I.

<sup>5</sup> Orders P-81 and MO-1614.

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.

[20] The township states that the fee estimate is based upon representative samples of records and also the advice of individuals who are familiar with the type and content of the records. It states that the township's Chief Building Official, Public Works Superintendent, Deputy Clerk and Clerk reviewed approximately five files or representative samples of records within each of their departments and provided advice on times, quantities, locations, types of records, and fee estimates.

[21] The township states that the types of responsive records include, but may not be limited to, emails, property files, correspondence files, various large data, diagrams, illustrations and mapping files from third parties, building and entrance permits, and drainage reports. It states that the actions necessary to locate and provide the requested records involve:

- individuals physically going into various storage areas and active files and visually identifying and noting the requested records;
- once identified, removing the original records to the photocopying room;
- the records are photocopied into a hardcopy record or scanned into electronic format;
- the original records are then returned to their original location;
- the hard copied records are indexed and stacked;



- the electronic copies are indexed and saved in an identified electronic folder on the township's computer system
- individuals sitting at a desk and accessing individual employee computers at the township office and searching each hard drive for electronic records forming part of the request;
- individuals will also search the network hard drive within the municipal office for relevant records;
- electronic copies of the electronic records are indexed and saved in an identified electronic folder on the township's computer system;
- once all records are located, identified, copied and saved, township staff will review all records and identify those records or parts of records that fall within an exemption under the *Act*, that contains personal information, requires third party notice/authorization or is not responsive to the request;
- severed records will be indexed and recorded with notation of the nature of the severance, i.e. falls within an exemption, contains personal information, requires third party notice/authorization or is not responsive;
- letters will be sent to third parties with notice of request, identifying records with third party information, request consent to disclose the record and diarize the date by which a response is required;
- the township will review correspondence from third parties and take the appropriate steps depending on the response, i.e. disclose the record or notify the requester of the non-consent to disclose by the third party;
- individuals will manually redact portions of records that are to be severed;
- individuals will electronically redact portions of records that are to be severed;
- the final package of records (with severances) are prepared along with the response prepared by the township identifying with reasons those records that are not being disclosed;
- the final report is reviewed for accuracy and completeness prior to release; and
- the records are provided to the requester.

[22] The township states that it has not broken down the cost to complete each individual step for each record as many steps are made simultaneously. The township states that it has not included in its estimate the time to make decisions on records, identifying records for severing and other items listed as not allowable in the Notice of

Inquiry that it was sent by the IPC.

[23] The township states that due to the extremely large volume of documents resulting from the broad list of components to the request, the Clerk, Deputy Clerk, Chief Building Official and Public Works Superintendent will be required to do an extensive search as the paper records are not filed according to the entity submitting them but rather part of larger multi-document project files. In addition, it states that these individuals will spend a significant period of time reviewing hundreds of emails which may be relevant to the request and identify duplicates where other offices have been copied.

[24] The township states that it has determined, based on its representative samples as described above, that a large number of records will require severances or third party consultations or consents. It also states that in preparing the records for disclosure, staff will require time to scan the documents to be uploaded to a CD or external device as per the appellant's request. It also states that the large drawings, maps, illustrations, etc. will have to be sent out to be reduced for scanning, or copied, as the township does not have the equipment to do this.

[25] The township states that it does not have a specialized computer program to provide the records in electronic format and will utilize readily available computer tools in such programs as MS Office suite of programs to search the content of electronic records that are responsive to the request. It states that the time utilizing the searching capabilities of such programs is included in the fee estimate and that most of the time spent and the cost of scanning and copying will be done internally by its staff utilizing township's resources except for the large format records discussed above.

[26] The township further states that its fee estimate does not include shipping or photocopying costs.

[27] The appellant states that he had requested that the township take at least a cursory look at the documents to determine how many were duplicates and adjust the fee accordingly. He also submits that the township is a public institution and there should not be large amounts of documentation that the public has not already seen on the township agendas and/or at Council meetings. He also submits that many of the records could already be publicly available. He also attempted to somewhat narrow the request in his representations, however his representations were unclear as to what he wishes to remove from the scope of his request at this stage of the appeal process.

### ***Analysis/Findings***

[28] The township's fee estimate is broken down by it as follows:

#### *Search*

86 hours @ \$30 per hour	\$2,580.00
<i>Preparation</i>	
Approximately 50 per cent of records will have severances - possibly 2,600 pages, 2 minutes/page	
@ \$30 per hour for 86 hours	\$2,580.00
Cost of providing the information on CD	\$10.00
<u>Total</u>	<u>\$5,170.00</u>

[29] The appellant's request is quite broad and seeks a significant amount of records over a wide spectrum of the township's record-holdings from December 7, 2010 until March 20, 2014. I find that the town has provided a detailed explanation of the tasks it expected to undertake in locating and preparing the records for disclosure.

[30] Where a request is broad and involves records that are likely to be dispersed through an institution, high search and preparation fees may apply.<sup>6</sup> In this appeal, the search will be extensive requiring several township personnel searching several locations in a number of departments. Even if some of the records the appellant has requested may have been made public before by the township, the township still has to search for and locate these documents in response to the appellant's request.

[31] In arriving at its search fee estimate under section 45(1)(a), I find that the township properly sought the advice of individuals who were familiar with the type and contents of the requested records. In addition, it also based its decision on a representative sample of the records. It provided detailed representations on how it obtained this advice and how the representative samples were obtained and reviewed. It is clear from the township's representations the actions it will need to undertake to locate the requested records.

[32] I further find that the township has also properly estimated its preparation time under section 45(1)(b) to sever the responsive records.<sup>7</sup> As indicated by the township, it expects that half of the pages located by it will require severances. Generally, this office has accepted that it takes two minutes to sever a page that requires multiple severances.<sup>8</sup>

[33] I note that once the appellant pays the deposit of 50 percent of the expected fee

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<sup>6</sup> See Orders PO-3379 and PO-3375,

<sup>7</sup> Order P-4.

<sup>8</sup> Orders MO-1169, PO-1721, PO-1834 and PO-1990.

under section 7 of Regulation 823, and once the records are located and prepared for disclosure, he will only be charged for the actual work done to locate and to prepare the records for disclosure.

[34] Based on my review of the appellant's request and the township's representations, I find that the township has provided the appellant with a reasonable estimate of the fee that will be required to be paid under the *Act*. Therefore, I am upholding the township's fee estimate of \$5,170 under section 45(3) of the *Act*.

**B. Should the township be given a six month time extension to respond to the request?**

[35] Time extensions are governed by section 20(1) of the *Act* which states:

A head may extend the time limit set out in section 19 for a period of time that is reasonable in the circumstances, where,

(a) the request is for a large number of records or necessitates a search through a large number of records and meeting the time limit would unreasonably interfere with the operations of the institution; or

(b) consultations with a person outside the institution are necessary to comply with the request and cannot reasonably be completed within the time limit.

[36] The township states that it has sought a six month time extension since:

- a. there are a large number of records to be searched, located, reviewed and prepared for disclosure;
- b. it will take an extended period of time to work through the process without disrupting the day to day operations of the township... [T]he most appropriate individuals at the township to respond to this request... are the top four administrative officials in the township [the Clerk, Deputy Clerk, Public Works Superintendent and the Chief Building Official] with other statutory and assigned obligations for the day-to-day operation of the township. The significant time commitment to respond to this request must be balanced against the other obligations of these individuals; and
- c. numerous consultations with third parties will be required. It will take an extended time to identify those specific records and process the requests for consents.

[37] The township further states that it is a small rural municipality of approximately 5200 permanent residents, in which an estimated \$850,000,000, 270 megawatt wind

energy project is underway. It states that there are only three other office staff working at the municipal office, the Accounts Clerk, the Tax Collector and the Administrative Assistant, who have no knowledge of the requested records and cannot provide assistance in locating and reviewing them.

[38] The appellant disputes that there could be approximately 5,200 pages of responsive records as set out in the township's decision letter. He also states that some of the requested records may have been made public.

### ***Analysis/Findings***

[39] The issue in this appeal is whether a six month time extension is reasonable in the circumstances of the request, in the context of the provisions of section 20(1). Factors which might be considered in determining the reasonableness of a time extension under sections 20(1)(a) and (b) include:

[40] Section 20(1)(a):

- the number of records requested;
- the number of records the institution must search through to locate the requested record(s);
- whether meeting the time limit would unreasonably interfere with the operations of the institution;

[41] Section 20(1)(b):

- whether consultations outside the institution were necessary to comply with the request and if so, whether such consultations could not reasonably be completed within the time limit.

[42] The township summarized the appellant's request in its decision letter of December 10, 2014. Taking into account the narrowing of this request by the appellant in January 2015, essentially the appellant is seeking, for the timeframe of December 7, 2010 until March 20, 2014, the following records of the Reeve, three named Councillors, the Road Superintendent, the Building Superintendent, the Chief Administrative Officer/Clerk, and the Deputy Clerk of the township:

...internal correspondence;<sup>9</sup> plans and reports and cover letters; reports from government agencies that are not part of Agendas or Minutes of

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<sup>9</sup> According to the appellant, internal correspondence includes reports, records, journals, memos, emails, phone logs, phone journals, minutes of meetings (excluding general bi monthly council meetings), phone records, phone messages, and any billing made by the township to any or all of the entities listed in the appellant's request.

Council meetings; staff reports; draft reports from K2 [wind project], [names of 17 entities] including their staff, directors, managers, lawyers, subcontractors; correspondence, reports etc. from the K2 Drainage Petition; [named] Conservation Authority, Ministry of the Environment, [named project engineers] and Ministry of Transportation correspondence re their input into named gravel pit application for rezoning for storage of wind turbine parts, blades, nacelles, generators, storage trailers, personal trailers, any type of oil or grease.<sup>10</sup>

[43] Based on my review of the appellant's request, I find that in this appeal, section 20(1)(a) applies. I agree with the township that the request is for a large number of records and will require an extensive search through a number of different record-keeping holdings. I find that meeting the time limit would unreasonably interfere with the operations of the township.

[44] With respect to section 20(1)(b), other than notice to third parties, the township has not provided any submissions or evidence that it is necessary to undertake "consultations with a person outside the institution" as contemplated by section 20(1)(b).

[45] Notifying third parties is distinct from consultations under section 20(1)(b). In Order M-1, former Assistant Commissioner Tom Wright made the following comments:

In its representations, the institution appears to suggest that the fact that it was required to send notices to third parties justifies, in part, the time extension. Section 21 of the *Act*, provides for notice to third parties in certain circumstances, but, in my view, the procedures for sending such notices are not relevant to the issue of time extension and are a separate consideration for the institution.

[46] Section 21 of the *Act* sets out the relevant timelines that institutions must follow when notifying third parties. These notifications are not relevant to the issue of the township's time extension. Therefore, I find that section 20(1)(b) is not applicable in the circumstances of this appeal.<sup>11</sup>

[47] The township advised the appellant in its fee estimate decision letter of December 10, 2014 that its time extension of six months did not include the estimated time spent for processing third party notices nor time spent identifying records that require severing. It does not include staff time to assemble the information or time spent photocopying. It states that it has reduced the number of copies of e-mails as it is anticipating a number of duplicate emails copied to more than one staff member.

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<sup>10</sup> The township is aware that the appellant does not seek disclosure of agendas, agenda packages and minutes of meetings.

<sup>11</sup> See also Order PO-3151.

Therefore, it appears that the township intends to claim additional time beyond the six month search time for these additional activities.

[48] In my view, many of the records may contain third party information as they relate to a commercial venture for the development of a wind energy project. Section 21 of the *Act* provides that a head shall give third parties thirty days notice before granting a request for access to a record that might contain information referred to in section 10(1).<sup>12</sup> As stated above in Order M-1, the time required for giving notice to affected parties is not relevant to my determination of the reasonableness of the township's time extension decision.

[49] I find that, in essence, the township is stating that it needs more than six months until it is in a position to disclose the records to the appellant after the appellant has paid the deposit for the records.<sup>13</sup> It has indicated that it needs six months to decide which third parties to notify, as well as additional time beyond the six month time period to identify and prepare the records for disclosure. I find that having the appellant wait longer than six months to obtain a final access and fee decision after paying the deposit is not reasonable in the circumstances of this appeal.

[50] I find that, although the search will be extensive, a six month time extension to allow the township only to locate the records is not reasonable. According to the township, only four individuals will need to search their record holdings, namely the township's Clerk, Deputy Clerk, Public Works Superintendent and the Chief Building Official.

[51] I find in the circumstances of this appeal that, after payment by the appellant of the deposit of 50% of the fee estimate of \$5,170, a three month time extension to search for the responsive records is reasonable.

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<sup>12</sup> Section 10(1) reads:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or
- (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

<sup>13</sup> As stated above, under section 7(1) of Regulation 823, a 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.

**ORDER:**

1. I uphold the township's fee estimate in the amount of \$5,170.
2. I allow the township a time extension of three months from the date of the appellant's payment of the fee estimate deposit.

Original Signed by: \_\_\_\_\_

Diane Smith  
Adjudicator

\_\_\_\_\_ March 23, 2016