

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3397

Appeal MA14-283-2

City of Toronto

December 30, 2016

Summary: The appellant made a request to the City of Toronto under the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* for the entire Mimico Secondary File, which is an area or neighborhood plan created under the Toronto Official Plan. The appellant appealed the city's search fee of \$300.00 and its preparation fee estimate of \$500.00 charged by the city under section 45(1) of *MFIPPA*. This order upholds the city's search fee and its preparation fee estimate.

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

OVERVIEW:

[1] A request was submitted to the City of Toronto (the city) under the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA or the Act)* for access to the following information:

Request to review the entire Mimico Secondary File which is an area or neighborhood plan created under the Toronto Official Plan and in accordance with the city's open, transparent and accountability policy for citizens who have paid for all the input into this Secondary Plan for the area.

[2] The city issued an interim access decision containing a fee estimate of \$300.00

based on 10 hours of search time and requested a deposit of \$150.00 in order to proceed with the processing of the request.

[3] The requester, now the appellant, appealed the city's decision and appeal MA14-283 was opened. The appellant subsequently submitted the deposit of \$150.00 to the city. The city proceeded with processing the request and appeal MA14-283 was closed.¹

[4] The city issued a letter providing the appellant with a status of the access request. In this letter, the city indicated that there were 6 boxes of records with respect to the Mimico Secondary Files and that it would remove the Public Meeting Sign-in Sheets and Mailing Lists of constituents in order to reduce the severing costs. The city also estimated that approximately 600 pages of records required severing as they contain personal information. The city issued a fee estimate of \$500.00 for severing these pages of records and requested a deposit of \$250.00 in order to proceed with processing this portion of the request.

[5] The city subsequently issued a decision letter granting partial access to the responsive records with severances pursuant to the mandatory personal privacy exemption in section 14(1) of the *Act*. The city explained that an outstanding balance of \$160.00 was owing, representing \$150.00 for the balance of the search fee estimate of \$300.00 less the deposit of \$150.00 and \$10.00 for the cost of preparing a copy of 7,527 pages of records on a CD.

[6] In the decision, the city restated the fee estimate of \$500.00 for severing 600 pages of records containing personal information and reiterated that it would process this portion of the request upon receipt of a deposit of \$250.00.

[7] The appellant appealed this decision of the city.

[8] During the course of mediation, the appellant advised the mediator that she was appealing the fee of \$300.00 and the fee estimate of \$500.00 and was seeking a refund of the \$150.00 deposit she had previously submitted to the city under protest. The appellant explained that her request is to review the file and that she did not request copies of any records.

[9] During mediation, the city maintained its fee decision and explained that it could not accommodate the appellant's request to view the records.

[10] As further mediation was not possible, this matter proceeded to the adjudication

¹ The city states that advised the appellant that it would provide a fee estimate for the severing of the personal information in these records should the appellant wish to pursue the records that contain personal information of other individuals at a later date. It submits that this arrangement was agreed to by the appellant in her response letter of March 29, 2015 and that on March 30, 2015, the city issued a fee estimate of \$500.00 to the appellant for the remaining 600 pages of "community consultation" type records, which required personal information to be severed from the majority of these documents.

stage of the appeal process where an adjudicator conducts an inquiry.

[11] Representations were sought and exchanged between the city and the appellant in accordance with section 7 of the IPC's² *Code of Procedure and Practice Direction 7*.

[12] In this order, I uphold the city's search fee of \$300.00 and its preparation fee estimate of \$500.00.

DISCUSSION:

[13] There are two fees at issue in this appeal, the \$300 search fee and the \$500 preparation fee estimate. I will consider each item separately in this order.³

Search Fee of \$300

[14] The city states that it issued a search fee estimate of \$300.00 (10 hours of search time at \$30 per hour) based on the advice and knowledge of staff who are familiar with the volume and content of the requested records.⁴

[15] The city states that during mediation of the appeal, the appellant agreed to submit the 50% fee deposit of \$150.00, which was received. Upon receipt of the 50% deposit, the city viewed the submission of the 50% fee estimate payment as an acceptance of the entire fee estimate and it proceeded to process the request.

[16] Upon completion of the review of the remaining records (7,527 pages), the city issued an access decision to the appellant and advised her that upon payment of the outstanding search fee of \$150.00 and \$10.00 for the cost of preparing the electronic records on 1 CD, the records would be released to her.

[17] The city states that given the large volume of requested records, the fee estimated by the city was a conservative figure to cover the number of hours staff spent to search, locate, and identify the responsive records across several different work locations within its Planning Division. It submits that the search was especially difficult due to the lack of a clearly defined scope and time frame for the records search.

[18] The city further states that its Planning staff advised that the entire Mimico Secondary file was work that was undertaken over a period of years, by a number of

² The Information and Privacy Commissioner, Ontario, Canada.

³ The appellant provided extensive representations about the subject matter of the records, however, I am only considering the reasonableness of the \$300 search fee and the \$500 preparation fee estimate in this order.

⁴ The city states that its search fee estimate letter indicated that it did not include fees for photocopying the records (\$0.20 per page) or for severing any information deemed exempt under *MFIPPA*.

different staff, and it would require significant time to put together one package of all records related to this Secondary Plan Study. It states that each Planner, Manager or Director involved would need to search for several years of records within staff filing cabinets, district offices, central or off-site filing locations, and email records. Based on the knowledge of the city Planning staff, it was estimated that the search time would be 10 hours at least.

[19] The city states that the search fee estimate of \$300.00 represents a small amount of the actual staff time that went into searching for the requested records. The city states that the email records particularly are time consuming to locate, given that the email system is not a document management system. Staff would have to use a variety of keywords to locate all emails that relate to the Mimico Secondary Plan. Following the initial search, each email would need to be reviewed to determine if it indeed was responsive to the request. Based on the knowledge of city Planning, and taking into account all of the above, the city estimated that the search time would be 10 hours to locate "everything" related to the Mimico Secondary Plan, as requested by the appellant.

[20] It is the city's position that the appellant had already agreed to the fee estimate at the time the 50% payment was submitted to it.

[21] The appellant states that at no time did she abandon her request for a review of the \$300.00 search fee estimate and that she only provided the \$150.00 deposit under protest. She finds the search fee estimate of \$300.00 not credible. She states that the city did not schedule a viewing appointment for her to assess the general planning records.

[22] The appellant also states that:

The work proposed by the city is a "make work project", and is entirely unnecessary, along with the proposed costs to undertake the "make work project". If previously undisclosed documents are discovered of which I require copies, then I will pay the photocopying fee, or take a photo.

[23] In reply, the city provided additional information about the search fee estimate. Concerning emails, it states that following the initial search, each email would need to be reviewed to determine if it indeed was responsive to the request. Based on the knowledge of the city Planning, and taking into account all of the above, the city estimated that the search time would be 10 hours to locate "everything" related to the Mimico Secondary Plan, as requested by the appellant.

[24] The city states that it is irrelevant whether the \$150.00 was paid under protest and that if the appellant did not accept the fee estimate, then she should have continued with her initial appeal and had it resolved at that time.

[25] The city states that during mediation of the appeal, the mediator asked if any

records could be disclosed to the appellant at that time. It states that:

City Planning Division staff agreed to pull records from the already copied and compiled 6 boxes of records that were ready to be sent to the city Clerk's Office in response to the access request. One of the Planners assigned to the file noted that he would put together Mimico study materials that would commonly be available under the Routine Disclosure guidelines, even though these guidelines did not apply to Area Based Policy Studies. It should be noted that, at this point in the request/appeal process, the city never intended to let the appellant view original records. These records were actively being used for ongoing business purposes (OMB⁵ appeal) and it would not have been reasonably practicable to view the original records...

The appellant contacted the city Planner requesting an appointment to view the records (voice mail). The city Planner returned that call the following day, discussed the matter with the appellant and it was agreed that the appellant would contact the Planner the following week. [T]he Planner communicated to the city Clerk's Office that he did not hear back from the appellant with respect to a viewing appointment.

[The] city Planning [then] reassembled the responsive records for the access request and provided them to the city Clerk's Office for processing. At this point, any viewing of a portion of the records, original or otherwise, would not be possible without disassembling the records yet again. The city would not undertake this time consuming task again.

Furthermore, it should be noted that even if the city allowed viewing of the complete set of responsive records, the search fee would still apply...

It is the city's position that a large amount of work beyond the \$300.00 search fee has been expended by city staff. The appellant was asked on a number of occasions to narrow the request or specify the documents or information for which she was seeking access, however, the response has consistently been "everything"...

[26] In sur-reply, the appellant states that city Planning's suggestion that their materials underlying and in support of their Secondary Plan were scattered and not readily available for reference is nonsense. She refuses to pay for any claimed remedial collection and organization of "disorganized and scattered" city Planning files. This includes searching for any emails concerning the Secondary Plan, which should have been printed out when received and filed with the appropriate paper files at the time.

⁵ Ontario Municipal Board.

[27] The appellant states that her payment under protest of \$150.00 representing 50% of a claimed fee is not an acceptance of the fee to search for documents in a current active file held by the city Planning Department, to be adjudicated by the OMB. She states that the OMB recognizes the matter is entirely public in nature, and makes all documents available to the public.

Analysis/Findings re: \$300.00 search fee

[28] Where the fee exceeds \$25, an institution must provide the requester with a fee estimate.⁶

[29] 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.⁷

[30] 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.⁸

[31] The fee estimate also assists requesters to decide whether to narrow the scope of a request in order to reduce the fees.⁹

[32] In all cases, the institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated.¹⁰

[33] This office may review an institution's fee and determine whether it complies with the fee provisions in the *Act* and Regulation 823.

[34] In the city's first decision letter of May 26, 2014, the appellant was advised that:

It is estimated that it will take 2 staff approximately 10 hours to search for, locate, and identify the records from multiple locations including the city Planning Division at Etobicoke York District, South District, and the offsite Records Centre.

[35] In the city's second decision letter of March 5, 2015, it stated:

⁶ Section 45(3).

⁷ Order MO-1699.

⁸ Orders P-81, MO-1367, MO-1479, MO-1614 and MO-1699.

⁹ Order MO-1520-I.

¹⁰ Orders P-81 and MO-1614.

We have completed a preliminary review of the 6 boxes of records about the Mimico Secondary File.

[36] In the Notice of Inquiry, the city was asked concerning the search fee:

Did the institution base its fee on the actual work done to respond to the request? If not, did the institution

- seek the advice of an individual who is familiar with the type and contents of the requested records? If so, who is the individual, and to what extent is he or she familiar with the records?
- base its decision on a representative sample of the records? If so, how was the sample determined, and what records were identified?

How are the requested records kept and maintained?

What actions are necessary to locate the requested records? What is the estimated or actual amount of time involved in each action?

[37] The city did not respond directly to these questions.

[38] Concerning the search fee estimate of \$300.00, my understanding of the city's representations and decision letters is that it has completed the search for responsive records and that it took well over 10 hours, yet it has agreed to reduce the search fee to \$300.00. This represents 10 hours of search time at the rate set out in the *Act* and Regulation 823. Section 45(1)(a) of the *Act* reads in part:

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,
the costs of every hour of manual search required to locate a record;

[39] Section 6 of Regulation 823 reads in part:

The following are the fees that shall be charged for the purposes of subsection 45(1) of the *Act* for access to a record:

3. For manually searching a record, \$7.50 for each 15 minutes spent by any person.

[40] The appellant disputes the 10 hours of search time as she submits that the city's files are disorganized. I do not agree with the appellant's assertion that the files are disorganized and that all of the records, including emails, responsive to her request should have been readily accessible requiring no search time.

[41] I note that the appellant's request is quite broad and seeks the entire Mimico Secondary File. The city referred to Mimico Secondary file as work that was undertaken over a period of years, by a number of different staff and that a number of staff needed to search for records within staff filing cabinets, district offices, central or off-site filing locations, and email records.

[42] Based on my review of the city's representations, I disagree with the appellant that the records should have been readily available without the city expending any search time to locate them.

[43] Not only is the appellant's request quite broad, but the city has located 6 boxes of records consisting of over 7500 pages of records. I find that the city's search fee of \$300.00 is reasonable in the circumstances of this appeal.

[44] The appellant has paid a \$150 deposit on this \$300.00 search fee "under protest". She has not sought a fee waiver under section 45(4).¹¹

[45] In the initial fee estimate letter of May 26, 2014, the appellant was advised by the city that she could seek a fee waiver. This letter read in part:

The *Act* does provide that all or part of the fee can be waived if, in my opinion, it is fair and equitable to do so, if the fee will cause you a financial hardship or if dissemination of the record will benefit public health and safety. If you disagree with any aspect of the fee estimate or would like to discuss re-scoping your request, focusing on records of particular interest to you, please contact [city's access and privacy officer].

[46] The appellant did not seek a fee waiver from the city in response. Instead she paid the \$150.00 deposit.

[47] Concerning the appellant's payment of the \$150.00 fee estimate deposit "under protest", the *Act* does not provide for such a method. The appellant was offered a choice in the initial decision letter to either appeal the fee estimate or pay the deposit to

¹¹ Section 45(4) provides that:

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 in the regulations.

process the request. This letter stated:

Pursuant to Regulation 823, where the fee estimate is over \$100.00, an institution is permitted to require a deposit equal to 50 per cent of the estimated fee. Therefore, your written acceptance of the fee estimated together with a deposit of \$150.00 is requested prior to proceeding with this request. Please make the cheque payable to the City of Toronto...

You may ask for a review of this decision within 30 days of receiving this letter by contacting: The Registrar, Information and Privacy Commissioner/Ontario [contact information].

[48] By paying the \$150.00, the appellant agreed to the processing of the request. She could have appealed the fee estimate of \$300.00 and not paid the \$150.00 deposit.

[49] The city proceeded with the request and processed it after receiving the \$150.00 deposit. In its representations, the city does not say what the actual search time is other than it is well over the 10 hours that comprises the search fee estimate. The city has not sought an increased fee and is charging the appellant \$300.00 in a search fee for her request.

[50] As stated above, given the breadth of the appellant's request, I find the search fee of \$300.00 reasonable and I am upholding this \$300.00 search fee.

Preparation Fee Estimate of \$500

[51] The city states that on March 5, 2015, the Manager of Access and Privacy wrote to the appellant proposing that, in a bid to help reduce the cost, the city would remove the Public Meeting Sign-in Sheets and Mailing Lists of members of the public in full. The city also noted that it would provide a fee estimate for the severing of the personal information in these records should the appellant wish to pursue these documents at a later date. It submits that this arrangement was agreed to by the appellant in her response letter of March 29, 2015.

[52] On March 30, 2015, the city issued a fee estimate of \$500.00 to the appellant for the remaining 600 pages of "community consultation" type records, which required personal information to be severed from the majority of these documents. The documents consisted of Mimico 20/20 Policy Open House comment forms, Mimico 20/20 Open House Feedback Forms, Mimico 20/20 Surveys, and emails submitted by individual citizens. It estimated that 80% to 90% of the 600 pages are "community consultation" type records and would require severing of personal information. It states that the estimated fee for severing 500 pages of records at \$30.00 per hour, at 2 minutes per page, was \$500.00.

[53] The city states that pursuant to Regulation 823, it requested a written acceptance of the estimated fee together with a deposit of \$250.00 prior to proceeding

with the severing personal information within the requested records. The city did not receive a response for the above proposed work.

[54] The city states that within the requested records there was a significant portion of records that contain other individuals' personal information, which would require redaction prior to releasing any records to the appellant. In order to help reduce the severing costs for the broader request, the city states that it proposed to remove the records that required severing.

[55] The appellant states that she already received copies of many of the records in an unredacted form from an Ontario Municipal Board file.

[56] In reply, the city states that although the appellant does not wish to receive copies of documents submitted from members of the public containing personal information (largely addresses) who have not provided consent or Sign-in Sheets which require redaction, these records contain names and addresses of members of the public, along with their views and opinions on the Mimico Secondary Plan, information which is considered exempt under the mandatory personal privacy exemption in section 14(1) of *MFIPPA*. The city's intent was to redact the name and contact information and provide access to the comments made, as long as the comments did not identify an individual.

[57] The city states that the \$500.00 fee estimate was provided to the appellant if she did wish to obtain access to the submissions by the public with respect to the Mimico Study, in order to remove the personal information contained within these records.

[58] Concerning the OMB process, the city states that it was the appellant's choice to pursue documents through both the FOI¹² process and the OMB proceedings.

[59] In sur-reply, the appellant explained that an acceptable appointment time to view the records could not be arranged. She states that:

It is my understanding from [name] of the city Clerk's office that city Planning provided the Clerk's Office with photocopies of documents proffered in a "disorganized" fashion. There is no "assembling and disassembling". At the Etobicoke City Planning office, a document was removed from a file folder, photocopied, and returned to the file folder, or should have been, in an orderly manner...

The Mimico by-the-lake Secondary Plan is a public document, and all its input and sources should have been disclosed publicly.

¹² Freedom of Information.

The public has a right to know what information was considered, and who provided that information, without having to pay many hundreds of additional dollars.

The fundamental principle is: the public has already paid for all the work done and is entitled to know exactly what was done at no further costs.

Analysis/Findings re: \$500 preparation fee estimate

[60] Section 45(1)(b) 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,

the costs of preparing the record for disclosure;

[61] More specific provisions are found in section 6 of Regulation 823, which reads in part:

The following are the fees that shall be charged for the purposes of subsection 45(1) of the Act for access to a record:

4. For preparing a record for disclosure, including severing a part of the record, \$7.50 for each 15 minutes spent by any person.

[62] Section 45(1)(b) includes time for

- severing a record¹³
- a person running reports from a computer system¹⁴

[63] Generally, this office has accepted that it takes two minutes to sever a page that requires multiple severances.¹⁵

[64] Section 45(1)(b) does not include time for

- deciding whether or not to claim an exemption¹⁶
- identifying records requiring severing¹⁷
- identifying and preparing records requiring third party notice¹⁸

¹³ Order P-4.

¹⁴ Order M-1083.

¹⁵ Orders MO-1169, PO-1721, PO-1834 and PO-1990.

¹⁶ Orders P-4, M-376 and P-1536.

¹⁷ Order MO-1380.

- removing paper clips, tape and staples and packaging records for shipment¹⁹
- transporting records to the mailroom or arranging for courier service²⁰
- assembling information and proofing data²¹
- photocopying²²
- preparing an index of records or a decision letter²³
- re-filing and re-storing records to their original state after they have been reviewed and copied²⁴
- preparing a record for disclosure that contains the requester's personal information [Regulation 823, section 6.1].

[65] In its March 30, 2015 decision letter, the city advised the appellant that:

We have completed a preliminary review of the 6 boxes of records with respect to the Mimico Secondary Files. We have identified and estimated approximately 600 pages of records that will require redaction as these records contain personal information of other individuals, proprietary information, and information subject to solicitor-client privilege. Therefore, pursuant to *MFIPPA*, portions of the responsive records will be redacted accordingly.

With respect to records containing personal information, and upon review of these records, please be advised that we do not have consent from any individuals to release their personal information. In order to help reduce the severing costs, we intend to remove the Public Meeting Sign-in Sheets and Mailing Lists of constituents in full (please refer to letter and sample record provided you on March 3, 2015). However, within the remaining "community consultation" type records, in accordance with the *Act*, we will be required to remove (sever) any personal information that appears on these documents, which consist of Mimico 20/20 Policy Open House comment forms, Mimico 20/20 Open House Feedback Forms, Mimico 20/20 Surveys, and emails submitted by individual citizens.

¹⁸ Order MO-1380.

¹⁹ Order PO-2574.

²⁰ Order P-4.

²¹ Order M-1083.

²² Orders P-184 and P-890.

²³ Orders P-741 and P-1536.

²⁴ Order PO-2574.

It is estimated that 80% - 90% of the 600 pages noted above are the "community consultation" type records and will require severing of personal information. As such, the estimated fee for processing these records is as follows:

Cost of severing \$30.00 per hour - 500 pages at 2 minutes per page
\$500.00...

Alternatively, we can remove these "community consultation" records from the scope of your request, and should you wish to access them at a later date, this fee estimate will be valid. At this point we will not be reviewing these records until the deposit is received.

[66] The appellant does not want to pay a severing fee for the records that contain personal information of other individuals, nor has she agreed to remove these records from the scope of her request.

[67] The appellant may have received unredacted records from the OMB that contain personal information of other individuals. Receipt of records directly from the OMB under a non-FOI process is a different process than receipt of records through an access request under *MFIPPA*.

[68] The appellant has sought to obtain access to records that contain the personal information of other individuals.

[69] Under the mandatory personal privacy exemption in section 14(1) of *MFIPPA*, the city shall refuse to disclose personal information to any person other than the individual to whom the information relates except if the disclosure does not constitute an unjustified invasion of personal privacy.

[70] If the city withholds personal information under this mandatory exemption, after receipt of the severed records, the appellant can file an appeal to have this office review whether the city has properly applied the section 14(1) exemption. Nevertheless, if the appellant wishes to obtain copies of the records that contain the personal information of other individuals, she will need to pay the preparation fee for these records.

[71] The city has estimated \$500.00 in preparation fees and has asked the appellant for a deposit of \$250.00 to proceed to sever the records. The city has also offered to remove the records that contain personal information from the other records. The appellant has chosen to receive copies of all of the responsive records that contain personal information of other individuals, even though she may have already received some of these records from the OMB file.

[72] The city is allowed under *MFIPPA* to charge a preparation fee of two minutes per page at \$30.00 per hour (or \$1.00 per page) to sever a page that requires multiple

severances. The city has estimated that it will cost \$500.00 to sever the personal information from the records.

[73] In the circumstances, I uphold the city's fee estimate of \$500.00 for preparation of the records that contain the personal information of other individuals.

ORDER:

I uphold the city's search fee of \$300.00 and its preparation fee estimate of \$500.00.

Original Signed by: _____
Diane Smith
Adjudicator

December 30, 2016 _____