

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-3441

Appeal MA16-92

City of Toronto

May 16, 2017

**Summary:** The appellant made a request to the city under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for summary records detailing the investigation of public complaints made to the Toronto Paramedic Service about patient care. The city issued a fee estimate decision in which it set out a search time fee estimate in the amount of \$2,790 for 93 hours of search time. The appellant requested a waiver of the fee on the basis that dissemination of the records would benefit public health or safety. The city did not grant the fee waiver request, and the appellant appealed both the fee estimate and fee waiver decisions. In this order, the adjudicator reduces the fee estimate to \$1,020 representing 34 hours of search time. She also orders the city to grant a 50% waiver of the search fee.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 45.

### BACKGROUND:

[1] The appellant, a news reporter, submitted a request to the City of Toronto (the city) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

A description or summary of records detailing the investigation of each of the public complaints made to the Toronto Paramedic Service that fall under the category of 1) patient care and 2) paramedic department from, Jan. 1, 2009 to Dec. 31, 2014.

[2] The city issued a decision stating that approximately 200 boxes would have to be searched and setting out a fee estimate of \$7,380 for 246 hours of search time. The city also noted that its estimate does not include any costs associated with preparing the records for disclosure, such as severing and photocopying.

[3] The appellant requested a fee waiver on the basis that the dissemination of the information in the records will benefit public health or safety, within the meaning of section 45(4)(c) of the *Act*. The city, however, indicated that it would not waive the fee.

[4] The appellant subsequently narrowed his request to include only public complaints concerning patient care. The city revised its estimate to \$2,790 for 93 hours of search time. The city also explained that the responsive records will be severed as they contain patient information and paramedic employment information.

[5] The appellant reiterated his request for a fee waiver, but the city again did not grant the request.

[6] The appellant appealed the city's decision to this office. During the course of mediation, the appellant advised the mediator that he was appealing both the revised fee estimate and the city's refusal to grant a fee waiver. The city advised the mediator that it would not change its decisions on those issues, and the appellant advised the mediator that he would like to pursue the appeal at adjudication.

[7] Accordingly, the appeal was moved to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry under the *Act*. I began my inquiry by inviting and receiving representations from the city on the issues in this appeal. In accordance with this office's *Practice Direction 7: Sharing of Representations*, and with the city's consent, the city's representations were provided to the appellant with a Notice of Inquiry inviting the appellant to make representations on the issues. The appellant did not provide representations. However, with the appellant's consent, a copy of his arguments as set out in his appeal letter was shared with the city. The city then filed representations in reply.

[8] In this order, I reduce the fee estimate for search time from \$2,790 to \$1,020, and I order the city to grant a waiver of 50% of the search fee.

## **ISSUES:**

- A. Should the fee estimate for search time be upheld?
- B. Should the fee be waived?

### **Issue A: Should the fee estimate for search time be upheld?**

[9] 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.

[10] Regulation 823 sets out more specific provisions regarding fees. Section 6 of the regulation provides:

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:

...

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

[11] Other portions of section 6 address the fees for preparing and copying records, but those sections are not at issue in this appeal, as the city has not made a decision regarding those fees.

[12] Section 7 of the regulation addresses deposits:

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.

[13] Finally, section 9 provides that if a person is required to pay a fee for access to a record, the institution may require the person to do so before giving the person access to the record.

[14] Section 45 of the *Act* provides that an institution must advise the requester of the applicable fee where the fee is \$25 or less. Where the fee exceeds \$25, an institution must provide the requester with a fee estimate. 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>1</sup>

[15] 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>2</sup> The fee estimate also assists requesters to decide whether to narrow the scope of a request in order to reduce the fees.<sup>3</sup> 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>4</sup>

### ***Representations***

[16] The city submits that the Superintendent of Toronto Paramedic Services, with over 26 years of experience working in the unit, advised that approximately 200 boxes that meet the criteria of patient complaints will need to be searched and that the total number of paper files to be searched is 987. Complaint records from 2014 onward are located at Toronto Paramedic Services (TPS) headquarters in boxes located in five filing cabinets, while records prior to 2014 are located in the basement in storage boxes.

[17] The city submits that TPS has many categories of complaints: "paramedic conduct", "driving or vehicle operator", "patient care", "delayed response (operations)", "hospital destination concern", "failure to follow policies and procedures", "other complaints", "customer service", "outcome appeal", "disability/AODA related", and "access/human rights". The city states that patient care and paramedic conduct are the most common types of complaints.

[18] The city advises that after the request was narrowed to include only summaries of complaints concerning patient care and not paramedic conduct, TPS staff estimated that 370 complaint files were about patient care specifically.

[19] The city explains as follows:

All complaint records are filed together by incident date, not filed together by type. Initially a search would need to be completed to separate out "patient care" files. Of the remaining 370 patient care complaint files, each of the files contain records pertaining to the complaint including emails, timesheets for Paramedics for interview times, ambulance call

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<sup>1</sup> Order MO-1699.

<sup>2</sup> Orders P-81, MO-1367, MO-1479, MO-1614 and MO-1699.

<sup>3</sup> Order MO-1520-I.

<sup>4</sup> Orders P-81 and MO-1614.

reports, witness statements, and the incident report, which would be the responsive document. This document would outline the incident that occurred, action taken and findings. Individual files (some sizeable) would have to be searched manually and read to locate and extract this incident report.

Given the manual search that would need to be undertaken to locate the responsive record from each file, it is the City's position that the fee estimate is valid and should be upheld.

[20] The city attached to its representations a sample page from a spreadsheet containing an anonymized list of complaints detailing the date of the complaint, the category of complaint, and whether the complaint was substantiated.

[21] The appellant's appeal letter focussed on the fee waiver issue (Issue B below) and did not address the fee estimate.

### ***Analysis and findings***

[22] In the Notice of Inquiry that I sent to the city, I asked how the requested records are kept and maintained, what actions are necessary to locate the requested records, and what time was involved in each action. The city has explained how the requested records are kept and maintained, and has provided some information about what actions are necessary to locate the requested records, but has provided no information about what time is involved in each action. The city simply provided an overall search time of 93 hours, with no detailed explanation of how it arrived at this number.

[23] According to the city, there are 370 patient care files that would be expected to contain information responsive to the appellant's request, which covers a time period of 6 years. From my review of the sample of the spreadsheet that the city provided to the appellant, I observe that complaints about patient care are clearly identified as such and that the date of each incident is also identified.

[24] The city has not provided information about how the boxes of files are organized. However, given that the city states that the files themselves are organized by date, I find it reasonable to expect that the boxes are also organized and labelled by date. Given that the dates of the patient care complaints are known, and taking into account the city's statement that approximately 200 boxes will have to be searched, I find it reasonable to allocate 5 hours for locating and retrieving the boxes that contain the files at issue. I note that all of the boxes are on site, either at TPS headquarters or in the basement of that building.

[25] According to the spreadsheet sample provided by the city, approximately 20

complaints are made per month. If this number were constant for the time period covered by the request, this would mean that a total of approximately 1400-1500<sup>5</sup> complaints were made in the time period in which the 370 patient care complaints were made. However, the city has advised that the "total number of files to be searched" is 987. I understand the city to mean that a total of 987 complaint files of all types will have to be searched through to retrieve the 370 complaint files at issue. In any event, for the purposes of my discussion below, it makes no difference whether the total number of files to be searched through is 987 or closer to 1500.

[26] According to the city, approximately 200 boxes of files will have to be searched. Given that the total number of files to be searched through is in the range of 987 to 1500, it is reasonable to assume that each box contains an average of approximately 5-8 files, of which 1 or 2 are patient complaint files. I find that it is reasonable to expect that the type of complaint file is readily identifiable from either the label on the complaint file or from a cursory check inside the file. That being the case, I find that 5 minutes is a reasonable amount of time to allow for finding and retrieving the patient care complaint file(s) from each box, for a total of 1000 minutes (200 boxes x 5 minutes/box).

[27] The city advises that each of the 370 complaint files at issue contains records pertaining to the complaint including emails, timesheets, ambulance call reports, witness statements, and the incident report, which would be the responsive record. I find it reasonable to assume that the incident report is readily identifiable as such. I allow an average of two minutes per file to pull the incident report, recognizing that a few of the files are voluminous. It may take longer to pull the incident report from those files, and it will take much less time to pull the incident report from small files. I allow 740 minutes for this aspect of the search.

[28] Therefore, I allow a total search time estimate as follows:

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|--|--------------|
| - Retrieving boxes:                                      | 300 minutes  |
| - Locating and retrieving patient care files from boxes: | 1000 minutes |
| - Pulling incident reports from each patient care file:  | 740 minutes  |

[29] The total number of minutes is 2040 minutes, or 34 hours. According to section 6 of Regulation 823, the fee that shall be charged for manually searching a record is \$7.50 for each 15 minutes spent by any person. The allowable search fee in this case is, therefore, \$1,020.

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<sup>5</sup> 20 complaints per month x 12 months per year x 6 years = 1440 complaints.

## **Issue B: Should the fee be waived?**

[30] The fee provisions in the *Act* establish a user-pay principle which is founded on the premise that requesters pay the prescribed fees associated with processing a request unless it is fair and equitable that they not do so. The fees referred to in section 45(1) and outlined in section 8 of Regulation 823 are mandatory unless the requester can present a persuasive argument that a fee waiver is justified on the basis that it is fair and equitable to grant it or the *Act* requires the institution to waive the fees.<sup>6</sup>

[31] Section 45(4) of the *Act* requires an institution to waive fees, in whole or in part, in certain circumstances. Section 8 of Regulation 823 sets out additional matters for a head to consider in deciding whether to waive a fee. Those provisions state:

45. (4) A head shall waive the payment of all or any part of an amount required to be paid under subsection (1) if, in the head's opinion, it is fair and equitable to do so after considering,

(a) the extent to which the actual cost of processing, collecting and copying the record varies from the amount of the payment required by subsection (1);

(b) whether the payment will cause a financial hardship for the person requesting the record;

(c) whether dissemination of the record will benefit public health or safety; and

(d) any other matter prescribed by the regulations.

8. The following are prescribed as matters for a head to consider in deciding whether to waive all or part of a payment required to be made under the Act:

1. Whether the person requesting access to the record is given access to it.

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

[32] A requester must first ask the institution for a fee waiver before this office will consider whether a fee waiver should be granted. This office may review the institution's decision to deny a request for a fee waiver, in whole or in part, and may uphold or modify the institution's decision.<sup>7</sup> The institution or this office may decide that

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<sup>6</sup> Order PO-2726.

<sup>7</sup> Orders M-914, P-474, P-1393 and PO-1953-F.

only a portion of the fee should be waived.<sup>8</sup>

[33] For a fee waiver to be granted under section 45(4), the test is whether any waiver would be “fair and equitable” in the circumstances.<sup>9</sup> Factors that must be considered in deciding whether it would be fair and equitable to waive the fees are

- section 45(4)(a): actual cost in comparison to the fee
- section 45(4)(b): financial hardship
- section 45(4)(c): public health or safety
- section 45(4)(d)/ section 8 of Regulation 823: whether the institution grants access

[34] Any other relevant factors must also be considered when deciding whether or not a fee waiver is “fair and equitable”.

### ***Representations***

[35] The appellant argues that the dissemination of the records will benefit public health or safety. In his appeal letter, he states as follows:

We believe that the details of these complaints and their investigations will shed light on a health care profession that, unlike others in the health care system, is not mandated to make disciplinary records and investigations accessible within the public domain. According to Section 11 of Ontario Regulation 257/00 under the *Ambulance Act*, an obligation is placed on the operators of ambulance services to ensure that their paramedics meet certain standards when delivering patient care. There are 125 patient care complaints that were investigated and where the paramedic was found at fault. The City of Toronto has said any identifiers, including disciplinary action, would be redacted.

Meanwhile, paramedic regulatory bodies, such as colleges and associations, have been established in Alberta, Saskatchewan, New Brunswick and Nova Scotia. Ontario does not maintain a self-regulatory professional college of paramedics and therefore, the visibility of, and public access, to, the complaints and disciplinary process and records against them are not publically accessible in Ontario.

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<sup>8</sup> Order MO-1243.

<sup>9</sup> See *Mann v. Ontario (Ministry of Environment)*, 2017 ONSC 1056.



Making these details public, we believe, will help to increase public safety and confidence in the medical function and role paramedics play within the healthcare system.

[36] In response, the city submits that it is unclear how the appellant scrutinizing the records will benefit public health or safety. It submits that the appellant has failed to identify how making these records available to the public will benefit public health or safety, and that the appellant has not stated exactly how or in what context he intends to disseminate the contents of the records. The city submits, further, that the complaints are mainly of a personal nature and do not indicate any systemic problems within the Toronto Paramedic Services. The city provides examples such as “the paramedics did not take me to the hospital I wanted to go to”, “the paramedic was rude”, and “the paramedic did not offer me the stretcher so I walked into the ambulance”.

[37] The city explains that in Ontario, all certified ambulance service operators are regulated by the *Ambulance Act*<sup>10</sup> and the regulations under that Act. Under the *Ambulance Act*, the Ministry of Health and Long-Term Care may conduct investigations or request investigations to be conducted on its behalf by the ambulance provider. The Toronto Paramedic Service’s (TPS) investigation process may be subject to review by the Ministry at any time. The TPS’s Professional Standards Unit ensures compliance with Ministry patient care standards and training programs. The TPS is required to file incident reports regarding each complaint and/or complaint investigation conducted by it. Under the *Ambulance Act*, the ministry can review the reports, inquire as to the specific details of an investigation and, where deemed necessary, conduct its own investigations. The ministry conducts a peer audit every three years to ensure standards are being complied with.

[38] The city submits that, given the above-described oversight of the TPS’s complaint investigation procedures and practices, and ongoing training and awareness sessions for paramedics, there would be no further benefit to public health or safety resulting from the dissemination of the records at issue. The city submits that requiring TPS staff to take time away from their core functions to locate records at no cost would shift an unreasonable burden of these costs from the appellant to the city and ultimately to the taxpayers of Toronto.

### ***Analysis and findings***

[39] In order to determine whether a fee waiver should be granted under section 45(4), I must decide whether a fee waiver would be “fair and equitable” in the circumstances.<sup>11</sup> Factors which must be considered are set out in section 45(4).

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<sup>10</sup> R.S.O. 1990, as amended.

<sup>11</sup> See *Mann v. Ontario (Ministry of Environment)*, 2017 ONSC 1056.

[40] The parties did not make reference to any of the factors listed at sections 45(4)(a), (b) or (d). However, the appellant argues that dissemination of the record will benefit public health or safety, within the meaning of section 45(4)(c).

[41] The following factors may be relevant in determining whether dissemination of a record will benefit public health or safety under section 45(4)(c):

- whether the subject matter of the record is a matter of public rather than private interest
- whether the subject matter of the record relates directly to a public health or safety issue
- whether the dissemination of the record would yield a public benefit by
  - a. disclosing a public health or safety concern, or
  - b. contributing meaningfully to the development of understanding of an important public health or safety issue
- the probability that the requester will disseminate the contents of the record.<sup>12</sup>

[42] The focus of section 45(4)(c) is “public health or safety”. It is not sufficient that there be only a “public interest” in the records or that the public has a “right to know”. There must be some connection between the public interest and a public health and safety issue.<sup>13</sup>

[43] I will discuss each of the above factors in turn.

[44] First, I find that the subject matter of the records is one of public interest. The records set out complaints to the Toronto Paramedic Service about patient care delivered by its personnel. Members of the public, as potential patients of TPS personnel, clearly have an interest in the quality of patient care delivered by those personnel.

[45] Second, I find that the subject matter of the records relates directly to a public health or safety issue. The “controlled acts” that paramedics may perform, as set out in Ontario Regulation 257/00, include, but are not limited to administration of certain medications, external cardiac defibrillation, endotracheal intubation, and blood product administration. The very nature of the services provided by paramedics – assisting individuals who are sick or injured – is a matter of public health or safety. Allegations of substandard patient care are, in my view, an issue relating to public health or safety.

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<sup>12</sup> Orders P-2, P-474, PO-1953-F and PO-1962.

<sup>13</sup> Orders MO-1336, MO-2071, PO-2592 and PO-2726.

[46] The third factor is whether the dissemination of the record would yield a public benefit by disclosing a public health or safety concern, or contributing meaningfully to the development of understanding of an important public health or safety issue.

[47] I have not seen the records, and make no finding as to whether they would or would not disclose a public health or safety concern. According to the city, many of the patient care complaints were of a relatively trivial nature. On the other hand, the appellant submitted that there were 125 patient care complaints that were investigated and where the paramedic was found at fault.<sup>14</sup>

[48] However, I find that dissemination of the record would yield a public benefit by contributing meaningfully to the development of an understanding of an important public health or safety issue. Paramedics provide care for sick or injured individuals, often in emergency situations. Any issues relating to such care are, in my view, important public health or safety issues. Making the details of the patient care complaints public will assist the public in understanding these issues.

[49] I note that much of the city's representations focus on the amount of oversight to which the TPS is subject. In my view, however, there can still be a public health and safety benefit to dissemination of records even if the subject matter of the records is a matter that receives considerable oversight. An understanding of a public health and safety issue may, for example, inform discussions about oversight measures and whether or not those measures are adequate.

[50] Finally, I am satisfied that the appellant is likely to disseminate the contents of the records. The appellant is a news reporter who, in his letter of appeal, refers to this appeal being part of his research for public interest journalism. While the appellant has not specified exactly in what form he intends to disseminate the information, I am satisfied that he is likely to make it public in some format, whether it be in its original form or as interpreted by him.

[51] I conclude that the factor at section 45(4)(c) applies. However, that is not the end of the matter. In order for a fee waiver to be in order, I must be satisfied that it would be fair and equitable to grant a fee waiver, taking into account the factors at section 45(4) and any other relevant factors.

[52] The parties have not referred to the factors at sections 45(4)(a), (b) or (d), and I have no reason to believe that any of those factors are relevant here.

[53] Other factors that have been found to be relevant to the fee waiver issue are

- the manner in which the institution responded to the request

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<sup>14</sup> I presume that the spreadsheet of complaints and whether they were substantiated is the source of the appellant's information.

- whether the institution worked constructively with the requester to narrow and/or clarify the request
- whether the institution provided any records to the requester free of charge
- whether the requester worked constructively with the institution to narrow the scope of the request
- whether the request involves a large number of records
- whether the requester has advanced a compromise solution which would reduce costs
- whether the waiver of the fee would shift an unreasonable burden of the cost from the appellant to the institution<sup>15</sup>

[54] In this case, I have taken into account that the city did provide the requester with an option to narrow his request to reduce costs and that the appellant, too, worked constructively with the city to narrow the scope of his request. Since the city did not actually undertake the search, earlier efforts to narrow the request would not have reduced the fee below \$1,020. The parties' cooperation is a factor that does not weigh in favour of nor against a fee waiver.

[55] Another important factor to consider is whether waiver of the fee would shift an unreasonable burden of the cost of processing the request from the appellant to the city. I am mindful of the legislature's intention to include a user-pay principle in the *Act*. The user-pay system is founded on the premise that requesters should be expected to pay the fees associated with a request unless it is fair and equitable that they not do so. The fees referred to in section 57(1) are mandatory unless the appellant can present a persuasive argument that a fee waiver is justified on the basis that it is fair and equitable to grant it.<sup>16</sup>

[56] Having considered all of these factors, and in particular, in light of my finding that the factor in section 45(4)(c) applies, I find that it is fair and equitable to waive 50% of the search fee. In my view, this respects the user-pay principle of the *Act*, while making the records more accessible to the appellant, and without shifting an unreasonable burden to the ministry.

## **ORDER:**

1. I order a reduction in the city's search fee estimate from \$2,790 to \$1,020.

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<sup>15</sup> Orders M-166, M-408 and PO-1953-F.

<sup>16</sup> Order PO-2726.

2. I order the city to grant a waiver of 50% of the search fee.

Original Signed by: \_\_\_\_\_  
Gillian Shaw  
Adjudicator

\_\_\_\_\_ May 16, 2017