

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-3523

Appeal MA16-200

Regional Municipality of York

November 21, 2017

**Summary:** The requester sought access from the Regional Municipality of York (the region) to records under the *Municipal Freedom of Information and Protection of Privacy Act* about himself related to the issue of raw milk. This order reduces the \$13,860 fee estimate to \$3,468.50 on the basis that a significant percentage of the records appear to contain the personal information of the appellant and, therefore, the search and preparation estimates are reduced.

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

**Orders Considered:** Orders MO-2530 and MO-3133-F.

### OVERVIEW:

[1] The Regional Municipality of York (the region) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA or the Act) for access to the following information:

Any documents, e-mails, reports, correspondence referring to raw milk and/or [named requester or his wife] from 2006 to 2016.

Any documents, correspondence, reports shared with Bruce Grey Owen Sound Health Unit containing Raw milk and or [named requester] since 2006.

Any report about food borne disease outbreaks since 2006 till now.

Any correspondence between MNR/OMAFRA [Ministry of Natural Resources/Ontario Ministry of Agriculture, Food and Rural Affairs] and York Regional Health [regarding] Raw milk and/or [named requester] since 2006.

[2] In its decision, the region advised that the time limit for responding to the request had been extended by 120 days in accordance with section 20 of the *Act* as the Community and Health Services and the Legal and Court Services departments were in the process of gathering all the responsive records. It stated that once all of the documentation had been received, this request would also involve representations from the responsive third parties and other levels of government.

[3] Along with the time extension, the region provided two different fee estimate options, one including all food borne disease outbreak reports for a total of \$29,979.56 and one that did not include food borne disease outbreak reports for a total of \$21,045.00. The region requested a 50% deposit before proceeding with the request.

[4] In addition, the region issued an interim access decision which stated that, based on the review of the representative sample, it estimated that partial access to the records would be granted. It stated that the exemptions in sections 8 (law enforcement), 9 (relations with other governments), 10(1) (third party information), 12 (solicitor-client privilege) and 14(1) (personal privacy) of the *Act* may apply to exempt certain information from the records.

[5] The requester, now the appellant, appealed the decision.

[6] During the course of mediation, the request was narrowed in an effort to reduce the fee. The revised request read as follows:

1. Any documents, e-mails, reports, correspondence referring to the requester from 2006-2008;
2. Any documents, e-mails, reports, correspondence referring to the requester or [his wife] from January 1, 2015 to January 1, 2016;
3. Any documents, correspondence, reports shared with Bruce Grey Owen Sound Health Unit referring to the requester from 2005-2008;
4. Any correspondence between MNR/OMAFRA and York Regional Health referring to the requester from 2005-2008 and from January 1, 2015 to January 1, 2016.

[7] The appellant confirmed that he was also asking for a fee waiver on the basis of financial hardship and public health or safety, pursuant to sections 45(1) and 45(4)(b) and (c) of the *Act*.

[8] Following the revised request and receipt of the appellant's financial information, the region issued a revised decision. In this decision, the region noted that there still remained significant staff time required to locate and process the responsive records. The revised cost was estimated at \$13,860.00. The region denied the fee waiver on both the basis of financial hardship and public health or safety.

[9] The appellant was not satisfied with the revised decision and asked for this appeal to move to adjudication. The appellant confirmed that the request moving forward to adjudication is the revised request that was made during the course of mediation. In addition, the appellant confirmed that the time extension as noted in the region's original decision is not at issue.

[10] I sought representations from the region, which it provided. I then provided the appellant with a copy of the region's representations and sought representations from him. The appellant did not provide representations in response.

[11] In this order, I reduce the fee estimate from \$13,860 to \$3,468.50. I also find that, as the appellant has not provided representations in support of a fee waiver, there is insufficient evidence for a fee waiver.

## **DISCUSSION:**

### **Should the \$13,860 fee estimate be upheld?**

[12] Where the 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, 6.1, 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.

6.1 The following are the fees that shall be charged for the purposes of subsection 45(1) of the Act for access to personal information about the individual making the request for access:

1. For photocopies and computer printouts, 20 cents per page.
2. For records provided on CD-ROMs, \$10 for each CD-ROM.
3. For developing a computer program or other method of producing a record from machine readable record, \$15 for each 15 minutes spent by any person.
4. 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 region states that the fee estimate of \$13,860 represents the time and associated cost required to search for and process the requested records and does not include costs associated with reproducing or providing the records (i.e., photocopies or scanned copies) to the appellant. It states:

...in determining the fee estimate various staff members were consulted in the relevant departments who were familiar with the type and contents of the records requested. In particular, the Director, Health Protection and

Administrative staff to the Medical Officer of Health in our Community and Health Services Department were consulted and provided estimates on the amount and contents of the records related to the request.

Similarly, the Legal and Court Services Department provided an estimate on the amount and type of records related to the request within their custody and control.

***Search – Section 45(1)(a)***

[21] Concerning the search fee, the region states that the requested records are both physical and electronic and housed in a variety of different repositories across two departments. It describes the records' locations as:

- The electronic records are located in individual staff mailboxes, the region's electronic content management system and shared network drives.
- The physical records are located onsite at the region's facilities.

[22] The region states that its staff estimated it would take them approximately 41 hours to locate the responsive records. It estimated that some records contain personal information related to the appellant but, in other instances, they are comingled with general records. The region states:

For example, the records in the custody and control of the Community and Health Services Department relate to a complaint received regarding the sale and distribution of raw milk under the *Health Protection and Promotion Act*. Rather than attempting to separate the comingled records and prorate the costs associated with personal information and general records, aggregated search time was determined and used in the fee estimate.

*Analysis/Findings re: search*

[23] As noted above, the appellant is seeking access to the following information:

1. Any documents, e-mails, reports, correspondence referring to him from 2006-2008;
2. Any documents, e-mails, reports, correspondence referring to him or his wife from January 1, 2015 to January 1, 2016;
3. Any documents, correspondence, reports shared with Bruce Grey Owen Sound Health Unit referring to him from 2005-2008;

4. Any correspondence between MNR/OMAFRA and York Regional Health referring to him from 2005-2008 and from January 1, 2015 to January 1, 2016.

[24] All of these four items at issue refer to the appellant and may contain his personal information.

[25] The region has charged the appellant for 41 hours of search time. At a rate of \$30 per hour this equals \$1,230.

[26] The region was advised in the Notice of Inquiry that by reason of section 6.1 of Regulation 823, section 45(1)(a) does not include the search time for manually searching a record for the appellant's personal information.

[27] The region states that the records contain the personal information of the appellant, but has not indicated what percentage of the records may contain this information.

[28] The region has only provided a global search fee estimate of 41 hours and has not provided a breakdown of this amount, even though searches are to be conducted by various individuals in the Community and Health Services Department, as well as searches in the Legal and Court Services departments.

[29] As noted above, the region is required to provide the appellant with a fee estimate that provides him with sufficient information to make an informed decision on whether or not to pay the fee and pursue access. This fee estimate must include a detailed statement as to how the fee was calculated.

[30] In the circumstances of this appeal, by providing only a global search fee of 41 hours, I find that the region has not provided a sufficiently detailed estimate of the search fee.

[31] As the region had received estimates from various staff members in the relevant departments who were familiar with the type and contents of the records requested, it should have provided the appellant with more information about what each department provided in terms of the search time and the amount of records that would contain the appellant's personal information. This would provide the appellant with the opportunity to review the estimated search fee from these individuals or departments. This would also allow the appellant the opportunity to make an informed decision on whether or not to pay the deposit for the fee estimate and pursue access.

[32] All four items in the request indicate that the records may contain the personal information of the appellant. The region is not allowed to charge the appellant to search for his own personal information. Its representations indicate that it has done so.

[33] The IPC's Guideline (the Guideline) on "Fees, Fee Estimates and Fee Waivers for requests under *FIPPA*<sup>6</sup> and *MFIPPA*" provides institutions with guidance as to the issuance of a fee estimate, as follows:

*How does the institution provide a reasonable fee estimate and an adequate interim access decision?*

Where the fee estimate is \$100 or more and the institution chooses not to complete all of the work necessary to respond to the request (until the requester pays a deposit), it must issue a fee estimate accompanied by an interim access decision.

The first step to properly determine the basis for the fee estimate and interim decision is to obtain a representative sample and/or consult with employees familiar with the type and content of the records. To do this, the institution must ensure:

- the sample contains all types of responsive records; and/or
- any consultations with employees include discussions about all types of responsive records.

The next step is to create a detailed breakdown of the calculation of each element of the estimated fee (i.e., search time, preparation time, computer costs, etc.) including:

- a description of the records responsive to the request;
- the location of the records (e.g., legal department files, enforcement branch files, etc.);
- whether any records contain personal information of the requester and therefore are not included in the search fee;
- whether the requester is likely to be given access to the requested records, in whole or in part;
- which exemptions may apply (in the absence of any cited exemptions, it is reasonable for a requester to infer that the records will be released in their entirety upon payment of the required fee);

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<sup>6</sup> The *Freedom of Information and Protection of Privacy Act*, the provincial equivalent to *MFIPPA*.



- the degree of disclosure (e.g., 10, 50, or 95 per cent of total records and/or the estimated number of pages or parts of pages to which access will be granted); and
- the degree of severing for parts of records (i.e., low, moderate, or extensive). [emphasis added by me]

[34] The Guideline also provides institutions with both a sample fee estimate and interim access decision calculation form and a sample fee estimate and interim access decision.

[35] Based on my review of the region's decision letters, I find that the region did not advise the appellant in its decision letters whether:

- any records contain his personal information and, therefore, are not included in the search fee;
- the degree of disclosure (e.g., 10, 50, or 95 per cent of total records and/or the estimated number of pages or parts of pages to which access will be granted); and
- the degree of severing for parts of records (i.e., low, moderate, or extensive).

[36] Concerning the search fee, as noted, the region has not estimated the percentage of records that contain the appellant's personal information. Based on my review of the request, it appears that a significant percentage of the records responsive to all four parts of the request would likely contain the appellant's personal information. Therefore, taking into account that the request sought the appellant's own information, I am reducing the search fee estimate by three quarters from \$1,280 (being 41 hours at \$30 per hour) to \$320 (being 10.67 hours of search time at \$30 per hour). I find this to be a reasonable search fee estimate.

***Preparation for Disclosure - Section 45(1)(b)***

[37] The region states that in preparing the responsive records for disclosure it is necessary to review approximately 20,000 responsive pages and either partially or fully sever 12,626 pages. The region estimates that partial access to the records will be granted, and the following exemptions may apply:

- Section 8 - Law Enforcement
- Section 9 - Relations with Government
- Section 10 - Third Party Information
- Section 12 - Solicitor-Client Privilege

- Section 14 - Personal Privacy

[38] In applying these exemptions, the following processing time was estimated by the region:

<b>Department or Branch</b>	<b>Pages</b>	<b>Hours</b>	<b>Cost</b>
Legal and Court Services (~75% severed)	7,313 out of 9,750	244	\$7,320
Community & Health Service (~ 50% severed)	5,313 out of 10,626	177	\$5,310
<b>TOTAL</b>	<b>12,626</b>	<b>421</b>	<b>\$12,630</b>

[39] The region estimated it will take 421 hours to fully or partially sever these 12,626 pages.

*Analysis/Findings re: preparation for disclosure*

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

- severing a record<sup>7</sup>
- a person running reports from a computer system<sup>8</sup>

[41] Generally, this office has accepted that it takes two minutes to sever a page that requires multiple severances.<sup>9</sup>

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

- deciding whether or not to claim an exemption<sup>10</sup>
- identifying records requiring severing<sup>11</sup>

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

<sup>8</sup> Order M-1083.

<sup>9</sup> Orders MO-1169, PO-1721, PO-1834 and PO-1990.

<sup>10</sup> Orders P-4, M-376 and P-1536.

- identifying and preparing records requiring third party notice<sup>12</sup>
- removing paper clips, tape and staples and packaging records for shipment<sup>13</sup>
- transporting records to the mailroom or arranging for courier service<sup>14</sup>
- assembling information and proofing data<sup>15</sup>
- photocopying<sup>16</sup>
- preparing an index of records or a decision letter<sup>17</sup>
- re-filing and re-storing records to their original state after they have been reviewed and copied<sup>18</sup>
- preparing a record for disclosure that contains the requester's personal information [Regulation 823, section 6.1].

[43] As noted above, section 6.1 of Regulation 823 does not provide for a preparation fee to be charged for the purposes of subsection 45(1) of the *Act* for access to personal information about the individual making the request for access.

[44] The region was advised in the Notice of Inquiry about section 6.1 of Regulation 823, however, it did not provide representations as to how many pages of the records that require preparation contain the personal information of the appellant.

[45] The region estimated that there were 12,162 pages that require severing and is charging a fee of \$1.00 per page representing 2 minutes of the allowed preparation fee per page, as set out above. At this rate, the claimed preparation fee estimate is \$12,162.

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<sup>11</sup> Order MO-1380.

<sup>12</sup> Order MO-1380.

<sup>13</sup> Order PO-2574.

<sup>14</sup> Order P-4.

<sup>15</sup> Order M-1083.

<sup>16</sup> Orders P-184 and P-890.

<sup>17</sup> Orders P-741 and P-1536.

<sup>18</sup> Order PO-2574.

[46] Similar to my findings on the search fee, as all four items of the request appear to seek personal information related to the appellant, I am reducing the preparation fee estimate by three quarters from \$12,162 to \$3,040.50. I find this to be a reasonable preparation fee estimate.

***Computer and other costs incurred in locating, retrieving, processing and copying a record – Section 45(1)(c)***

[47] The region states that two options were presented to the appellant:

Option # 1 – Photocopies

As per section 45(1) of the *Act* \$0.20/per page was charged for photocopies. With an estimated 7,750 pages (after severances are applied) to be released this amounted to \$1,550.00 in photocopying charges.

Option #2 - Documents on CD

As per section 45(1) it was estimated that it would take approximately 6 hours to scan the 7,750 records to CD. At a cost of \$30/hour to scan the records this was estimated to the requester as being \$180. The \$10/CD was not included in the estimate

*Analysis/Findings re: section 45(1)(c)*

[48] Section 45(1)(c) includes the cost of

- photocopies
- computer printouts and/or CD-ROMs
- developing a computer program

[49] Section 45(1)(c) does not include the cost of

- a computer to compile and print information<sup>19</sup>

[50] Concerning, option 1, the cost of photocopies of the records, I agree with the region that a charge of \$0.20 per page is appropriate and allowable by reason of sections 6 and 6.1 of Regulation 823. If the appellant chooses to obtain the records as paper records, the region is allowed to charge him \$0.20 per page photocopied by it.

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<sup>19</sup> Order M-1083.

[51] Concerning, option 2, the cost of scanning the records onto a CD, previous orders have determined that this cost should only apply to paper records that are required to be scanned in order to provide the requester with a copy on CD.

[52] The region indicated that the responsive records are both physical and electronic and housed in a variety of different repositories across two departments. For electronic records, this includes individual staff mailboxes, the region's electronic content management system and shared network drives. Physical records relating to the revised request are located onsite at the region's facilities.

[53] The region has not indicated what percentage of the records may be in electronic format and, therefore, would not need to be scanned before placing on a CD. In Final Order MO-3133-F, the adjudicator considered the issue of scanning of records on to a CD. He stated:

Other orders of this office have addressed a submission that photocopying is required before scanning to a CD-ROM.<sup>20</sup> There is no evidence before me that all the records are stored electronically. There [is] a large volume of responsive records. In Order MO-2530, Adjudicator Laurel Cropley wrote:

Section 6.2 of Regulation 823 indicates that the cost for providing records on CD-ROM is \$10 for each CD-ROM. I interpret this section as referring to making CDs of machine readable records. The regulation does not specifically refer to scanning paper records in order to provide the information on CD. In my view, this activity is a necessary component of producing the paper records in the format requested by the appellant [see Order PO-2424 for a discussion of producing a record in a version other than as a paper record]. As I noted above, section 6.4 of the regulation provides that an institution may charge \$7.50 for each 15 minutes spent by any person "for preparing a record for disclosure." The Town has applied this fee structure in estimating the costs associated with producing the information on CDs. I am satisfied generally in the approach taken by the Town.

Although a fee for preparing a record for disclosure is not at issue in this appeal, I find Adjudicator Cropley's reasoning equally applicable with respect to a fee for photocopying under section 6.1 of the regulation for the purposes of scanning. I am satisfied that, as explained by the board, scanning photocopies of severed records is necessary whether to provide them in paper form to the appellant or in order to provide the information

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<sup>20</sup> Orders MO-2530, MO-2577, MO-2595 and MO-2908.

on a CD-ROM.<sup>21</sup> Accordingly, in all the circumstances, the board's photocopying fee estimate of \$1190.00 is allowed.

[54] Relying on the findings in Orders MO-2530 and MO-3133-F, scanning of records to place them on a CD is only necessary for records in paper format or for those that need to be photocopied to be severed, not those in electronic format. I find that the region is only allowed to charge to scan the responsive records that are not in electronic format already. Therefore, I find that the amount of its fee estimate of \$180 for scanning all 7,775 estimated pages of records is excessive. As the region has indicated that about 60% of the pages will require severing, I will reduce the fee estimate for scanning to 60% of \$180 or \$108.

***Conclusion re: fee estimate***

[55] I have reduced the search fee estimate to \$320 (being 10.67 hours of search time at \$30 per hour).

[56] I have reduced the preparation fee estimate to \$3,040.50 (being 101.35 hours at \$30 per hour of preparation time).

[57] I have reduced the other costs estimate under section 45(1)(c) to \$108, assuming the appellant will require the records on a CD.

[58] The shipping costs have not been estimated under section 45(1)(d), as it depends on whether the region is shipping a CD or paper records.

[59] The region has indicated that there will not be a charge under section 45(1)(e) for other costs.

[60] Accordingly, I am upholding the fee estimate in this appeal in the total amount of **\$3,468.50**.

[61] In addition, I note that the appellant had asked at the mediation stage of this appeal for a fee waiver under section 45(4). As the appellant has not provided representations in this appeal, I find that there is insufficient evidence at this stage to determine whether a fee waiver under section 45(4) is warranted for the actual fee.

**ORDER:**

I reduce the region's fee estimate to the total amount of \$3,468.50.

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<sup>21</sup> It should also be noted that for records provided on CD-ROMs, there may be an additional charge of \$10 for each CD-ROM.

Original Signed by: \_\_\_\_\_  
Diane Smith

November 21, 2017 \_\_\_\_\_