

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3592

Appeal MA16-608

The Township of Woolwich

April 23, 2018

Summary: The Township of Woolwich (the township or Woolwich) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* for records about the appellant and about a specific township file. In this order, the adjudicator reduces the fee estimate based on the percentage of records that may not contain the appellant's personal information.

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] The Township of Woolwich (the township or Woolwich) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA or the Act) for:

...a copy of every bylaw complaint, and including the Nordac system, with my name from 2011 to 2016. A copy of every email internal and external with my name [from] 2011-2016.

[2] The township issued a decision regarding the request for bylaw complaints with the appellant's name granting partial access to the requested records. The township waived any fees associated with this portion of the request. The township issued a fee estimate of \$1,190.00 for the second portion of the request, which included \$700.00 for

search time, \$350.00 for preparation and \$140.00 for photocopying. The decision noted that a preliminary search had yielded 1,472 possible emails.

[3] The requester, now the appellant, appealed the township's decision.

[4] During the mediation process, the appellant confirmed that she was no longer seeking a fee waiver.

[5] In an effort to reduce the fee, the appellant decided to narrow the scope of her request to:

1. Emails between [four named employees] about minor variance [#] and my name and minutes of their meeting associated with my name.
2. Emails between staff and [a named employee] with regards to bylaw complaints made by myself.
3. Emails between staff and [a named employee] with regards to bylaw complaints made by myself.
4. Emails between staff and [a named employee] with regards to Minor Variance [#].
5. Emails between [a named employee] and [a named employee] with my name.
6. Emails between the Mayor and Councillors regarding Minor Variance [#].

[6] The mediator conveyed this to the township. The township agreed to issue a revised fee estimate and in addition agreed to put the records on a CD-ROM which would further reduce the fee.

[7] The township issued a revised fee estimate of \$618.00 consisting of \$400.00 for search time, discounted by \$20.00, to account for the possibility that approximately 5% of the records may contain the appellant's personal information, \$240.00 for preparation time, discounted by \$12.00 for the same reasons noted above and \$10.00 for a CD-ROM. In the decision, which was drafted by a lawyer retained by the township, it was noted that section 12 of the *Act* may apply to withhold some of the information contained within the records.

[8] The appellant subsequently raised a conflict of interest issue with respect to the law firm retained by the township. Specifically, the appellant is of the view that the law firm is in a conflict of interest position. As a result, conflict of interest was added as an issue in this appeal.

[9] The mediator conveyed this to the township and the township agreed to issue a new revised fee estimate. The township subsequently sent the revised fee estimate

decision on township letterhead to the appellant.

[10] No further mediation was possible. As such, this file was transferred to the adjudication stage where an adjudicator conducts an inquiry. Representations were exchanged between the parties in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*.

[11] After receipt of the township's representations, the appellant decided not to pursue the conflict of interest issue. Therefore, this issue is not being adjudicated in this appeal. The only issue remaining is, therefore, the fee estimate issue.

[12] In this order, I reduce the township's fee estimate decision to \$320.00.

DISCUSSION:

Should the fee estimate be upheld?

[13] Where the fee exceeds \$25.00, an institution must provide the requester with a fee estimate.¹

[14] Where the fee is \$100.00 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.²

[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.³

[16] The fee estimate also assists requesters to decide whether to narrow the scope of a request in order to reduce the fees.⁴

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

[18] 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.

[19] Section 45(1) requires an institution to charge fees for requests under the *Act*.

¹ Section 45(3).

² Order MO-1699.

³ Orders P-81, MO-1367, MO-1479, MO-1614 and MO-1699.

⁴ Order MO-1520-I.

⁵ Orders P-81 and MO-1614.

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.

[20] 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.
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.

[21] The township states that the appellant has sought various internal emails between various named staff, councillors, and the mayor, with reference to a particular minor variance file, or the appellant's name.

[22] The township states that its Information Technology (IT) department was asked to conduct searches within the email server in response to this request. It states that a number of keyword searches were conducted that included the appellant's name and that of the staff and the file number named in the request. These searches included searches for emails within the mayor and councillors' mailboxes.

[23] The town states that it determined that there were over 800 potential responsive emails. Fifty of these emails were selected at random as a representative sample, in order to provide a fee estimate. The town found that within the representative sample, only 30 of the 50 emails (a 60% ratio) were responsive to the request and that none of the 30 responsive emails contained the personal information of the appellant.

[24] The township states that given that the request is for various internal emails between named staff and councillors with the name of the appellant, the emails each needed to be reviewed to determine whether any of the information is personal information. It determined that the records may contain the address of the appellant given that much of the request deals with a minor variance application filed by her

former neighbour, as well as the appellant's name that appears with other personal information relating to her.

[25] The township states that from within the representative sample, there were no responsive records that contained the appellant's address, however, there were various records that contained the appellant's name, so these records were reviewed to determine whether the name appeared in conjunction with other personal information or whether the disclosure of the name would reveal other personal information about the appellant. It states that the Deputy Clerk reviewed the responsive records in the sample, and was and is of the opinion that none of the responsive records trigger this definition of personal information.

[26] The township provided, as an example, a responsive email from the Chief Administrative Officer to Council, which was copied to two of the named employees that contains the appellant's name, but does not contain any other personal information and disclosure of same would not reveal any other personal information about her. It states that the email references, in broad generalities, a request by the appellant which was to be addressed in closed session of Council as legal advice would be received. It states that the attachment to this email is solicitor-client privileged, but the email itself is innocuous and contains no context that would reveal personal information.

[27] The township calculated the fee for search time at one minute per email, and the preparation time at one minute per record, at \$7.50 for each 15 minutes spent, as follows:

- Search time - 800 records at 1 minute per record \$400.00
- Preparation time - preparing 60% of 800 records (480 records) \$240.00

[28] The township states that:

Each of the above amounts was then further discounted to take into account potential records containing personal information that may be contained within the subset but not caught by the representative sample.

...It is recognized that upon completing the access request, there may in fact be a higher percentage of records that contain the [appellant's] personal information. Should that be the case, the final access fee would be less than the presumptive balance.

There is considerable complexity in assessing any responsive records on a record-by-record approach based on a representative sample. One such complication is the way in which email results are populated. What may appear as 8 responsive records may in fact be 8 back and forth emails in a single chain, which when reviewed in detail as part of the final access and indexing process, would likely be batched into a single record

[S]ince it is highly unlikely that in 800 email records, that there is no personal information, a margin of error was built into the fee decision, in the appellant's favour. Once the final access decision is made, there will be an accurate assessment of the total number of email records that contain personal information, and the final accounting will take place with a credit given for the deposit paid. In the circumstances of this access request, Woolwich requests a deposit of \$309.00.

[29] The appellant states that her request was for emails to review any defamation of her character due to the negligence of the township.

[30] The appellant disputes the search time, as the responsive emails that contain the file number listed in her request is under a separate file in the Building Department. She submits that if the township's files are organized, her name will appear with this file.

[31] The appellant states that her request as narrowed during mediation reduced the scope down to specific dates and the township does not refer to this in its calculations. She also submits that the specific meetings she is requesting could not yield that many responses.

[32] The appellant states further that the fee calculation is unrealistic considering the only email accompanying the township's representations is not one she requested. Therefore, she submits that this is an indication the township is searching for records unrelated to her request as narrowed during mediation. She states:

...The email attached is an indication there is a potential for a clear and concise record search. Microsoft is used in all municipalities and facilitates the process quickly...

[33] The township did not provide reply representations.

Analysis/Findings

[34] Based on my review of the fee estimate and the township's representations, it appears to me that the township has equated each email as a record in arriving at its estimate of 800 responsive records.

[35] The township's estimate also includes a charge for preparing each of the 800 emails for disclosure.

[36] The township has not estimated what percentage of the records may contain the appellant's personal information. Instead, the township has reduced the deposit sought

for the search and preparation time from \$320.00 to \$299.00.⁶

[37] As noted above, the appellant seeks the following information:

1. Emails between [four named employees (employees' number 1 to 4)] about minor variance [#] and my name and minutes of their meeting associated with my name.
2. Emails between staff and [employee number 3] with regards to bylaw complaints made by myself.
3. Emails between staff and [employee number 2] with regards to bylaw complaints made by myself.
4. Emails between staff and [employee number 4] with regards to Minor Variance [#].
5. Emails between [employee number 4] and [employee number 5] with my name.
6. Emails between the Mayor and Councillors regarding Minor Variance [#].

[38] Of the six items requested, four of these items concern the appellant.

[39] In response to the request, the township's IT services department performed the following keyword searches:

1. Emails within [employee number 2] mailbox containing the name [appellant] for the period of [date] to current day.
2. Emails within [employee number 1] mailbox containing the name [appellant] for the period of [date] to current day.
3. Emails within [employee number 3] mailbox containing the name [appellant] for the period of [date] to current day.
4. Emails within [employee number 4] mailbox containing the name [appellant] for the period of [date] to current day.
5. Emails within [employee number 5] mailbox containing the name [appellant] for the period of [date] to current day.

⁶ The town added the cost of \$10 to place the records on a CD-ROM. This charge for a CD-ROM is allowed under section 45(1)(c) of *MFIPPA* and sections 6 and 6.1 of Regulation 823 and can be charged by the township in its final fee decision.

6. Emails within [employee number 4] mailbox containing [#] for the period of [date] to current day.
7. Emails within the Mayor and Councillors mailboxes containing [#] for the period of [date] to current day.
8. Emails within [employee number 2] mailbox containing [#] for the period of [date] to current day.
9. Emails within [employee number 3] mailbox containing [#] for the period of [date] to current day.

[40] Of the nine searches conducted by the township, five of these searches were for records containing the appellant's name.

[41] The appellant indicates that the focus of her is a review of any defamation of her character due to the negligence of the township. I find that this type of information on its face appears to be personal information about the appellant.

[42] Based on my review of the request, the township's search, and the appellant's submission as to what the request relates to, I find that a reasonable estimate would be one that finds at least half of the responsive records would contain the personal information of the appellant.

[43] I disagree with the township that, other than a very small percentage, the records would not contain the personal information of the appellant. In my view, any responsive records would refer to the appellant, her address and other recorded information about her.

[44] The township did not provide me with a copy of the 30 responsive emails in its representative sample. From the sample, it provided only one record, which it has concluded does not contain the personal information of the appellant. I have reviewed this record and disagree with the township that it does not contain the appellant's personal information.

[45] This email refers to the defamatory issue raised by the appellant in her representations. As well, it refers to the appellant's retention of legal counsel and two attachments, which are not included in the township's representations. One of these attachments is a letter from the appellant's lawyer. The other is a response to that letter. I find that these attachments most likely would also contain the personal information of the appellant, as they concern the defamatory issue about the appellant.

[46] As noted above, section 45(1)(a) does not include the search time for manually

searching a record for the appellant's personal information.⁷

[47] As I have estimated that at least half of the records should contain the personal information of the appellant. I find that it is reasonable for the township to charge the appellant 50 percent of its estimated search time and I will reduce the estimated search fee of \$400. Therefore, I uphold the estimated search fee in the reduced amount of \$200.

[48] Concerning preparing the records for disclosure, section 45(1)(b) includes time for severing a record.⁸ Generally, this office has accepted that it takes two minutes to sever a page that requires multiple severances.⁹

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

- deciding whether or not to claim an exemption¹⁰
- identifying records requiring severing¹¹
- identifying and preparing records requiring third party notice¹²
- removing paper clips, tape and staples and packaging records for shipment¹³
- transporting records to the mailroom or arranging for courier service¹⁴
- assembling information and proofing data¹⁵
- photocopying¹⁶
- preparing an index of records or a decision letter¹⁷
- re-filing and re-storing records to their original state after they have been reviewed and copied¹⁸

⁷ Regulation 823, section 6.1.

⁸ Order P-4.

⁹ Orders MO-1169, PO-1721, PO-1834 and PO-1990.

¹⁰ Orders P-4, M-376 and P-1536.

¹¹ Order MO-1380.

¹² Order MO-1380.

¹³ Order PO-2574.

¹⁴ Order P-4.

¹⁵ Order M-1083.

¹⁶ Orders P-184 and P-890.

¹⁷ Orders P-741 and P-1536.

¹⁸ Order PO-2574.

- preparing a record for disclosure that contains the requester's personal information.¹⁹ [Emphasis added by me].

[50] The township has not indicated what preparation it is doing, other than reviewing the emails to see which are responsive. It did, however apply multiple severances to the record that accompanied its representations.

[51] I find that in the circumstances of this appeal, where I have found that at least 50 percent of the records should contain the appellant's personal information, I will likewise reduce the township's preparation fee estimate by 50 percent from \$240.00 to \$120.00

[52] Accordingly, I have found that a reasonable fee estimate in the circumstances of this appeal is a total of \$320.00, broken down into \$200.00 for a search fee estimate and \$120.00 for a preparation fee estimate.

ORDER:

I reduce the township's fee estimate to \$320.00.

Original Signed by: _____

Diane Smith
Adjudicator

April 23, 2018

¹⁹ Regulation 823, section 6.1.