

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4450

Appeal MA22-00100

Township of Russell

October 12, 2023

Summary: The Township of Russell (the township) received an access request under the *Municipal Freedom of Information and Protection of Privacy Act* for records relating to township committee meetings. The township issued a final access and fee decision granting partial access to the responsive records. The appellant appealed the amount of the \$1,510.00 fee. In this order, the adjudicator orders that the final fee be reduced to \$340.50.

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

Orders Considered: Order MO-1380.

OVERVIEW:

[1] The Township of Russell (the township) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

All records of the meetings of the Community Diversity, Equity, and Inclusion Committee, including but not limited to:

1. All records of the meetings of the Community Diversity, Equity and Inclusion Committee held in closed sessions on 30 November 2020

and 14 December 2020, including reports presented, notes by members and staff, and minutes of each meeting; and

2. All records of all "informal" communications and discussions concerning the above committee in any form including email and text messages. Time period: Sept 21, 2020 to June 14, 2021

[2] The township issued a decision stating that records responsive to part 1 of the request were denied pursuant to section 6(1)(b) (closed meeting) of the *Act*. Additionally, some information had been severed from the records under section 14(1) (personal privacy) of the *Act*. The final fee estimate was \$1,510.00.

[3] The requester paid the total fee and, after receiving the records, the requester (now the appellant) appealed the township's fee to the Information and Privacy Commissioner of Ontario (IPC).

[4] During mediation, the appellant stated that he believed he was overcharged for the fee as many of the records were duplicates, and he explained that he was seeking an 85% reimbursement of the fee. He confirmed that he is not appealing any of the exemptions applied to the records. The township explained that removing duplicate emails and pages would have added to the fee due to the increased preparation time. The township confirmed that they were maintaining their fee.

[5] Further mediation was not possible, and the appeal was moved to the adjudication stage, where an adjudicator may conduct an inquiry. I sought and received representations from both parties, and reply representations from the township. Representations were shared in accordance with the IPC's *Code of Procedure*.

[6] For the reasons that follow, I find that the township has not established that the fee they charged the appellant was reasonable and I order the fee reduced to \$340.50.

DISCUSSION:

[7] The sole issue in this appeal is if the township's fee should be upheld as reasonable.

[8] The IPC can review an institution's fee and can decide whether it complies with the *Act* and regulations. Section 45(1) sets out the items for which an institution is required to charge a fee:

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.

[9] More specific provisions regarding fees are found in section 6 of Regulation 823. The section reads:

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.

Representations

The township's representations

[10] The township submits that the fee was based on the fee schedule outlined above, and the actual work done by Committee members, Council, and municipal staff to respond to the access request. They state that 837 records in total were provided to the appellant, and note that fee estimates were provided to the appellant in two letters, with the appellant accepting the estimate knowing the amount of time involved in processing the request and the number of records that he would receive.

[11] They submit that the records requested were kept by different individuals in various formats, such as their email inbox, in files on their computer, in their phones,

and on paper. They state that all of these individuals needed to be contacted and asked to search for the records. They state that the records then needed to be collected and reviewed to identify them and ensure that they applied to the request. They state that the records were scanned onto electronic media, converted into an accessible format, and processed to provide electronic access to the appellant via a USB key, as the records were too voluminous to be provided by email. They submit that some of the records also needed to be severed pursuant to the exemptions in the *Act*.

[12] The township provided a chart with their representations that gave an overview of the number of staff that were involved in the access request. The chart outlines the amount of time each staff member spent searching for records, the number of records they found, the number of records that were provided to the appellant, and the amount of time that was spent preparing the records for disclosure, including severing the records. The chart identifies 15 people, with search times ranging from two minutes to nine hours. Based on the chart, four employees spent 32 hours preparing the records for disclosure, but a further breakdown of this time was not provided.

The appellant's representations

[13] The appellant submits that he objects to the township's fee based on the types of records he received, the search times that the township provided, and the preparation times that the township provided. He states that many of the records he received were duplicates, and says that these should not be considered multiple records, but instead copies of a single record. He provided a sample overview of the duplicate records that he received, stating that he received up to 12 copies of records such as meeting invites, links to newspaper articles, draft policies, and links to outside web pages. He submits that it is the responsibility of the township to remove duplicates, and he should not be charged for the time spent searching for duplicate records.

[14] For search times, he submits that section 17(1)(b) of the *Act* implies that an institution should have a filing system that is reasonably searchable. He states that of 586 files that were disclosed (referring to one part of his request), 575 were emails. He states that emails are electronically searchable and it takes a minimal amount of time to do so. He takes issue with the staff breakdown of search times that the township provided, noting that one employee took 12 minutes to find 200 files, of which 111 were released, all of which were emails. He contrasted this with another employee who took nine hours to find 82 files, of which 27 were released, all of which were emails.

[15] He states that the total search time should be reduced, with the standard of the employee who took 12 minutes to uncover 200 emails being used, reducing the total search time for the 575 emails to 35 minutes, for a charge of \$15.00. He also states that the search time should be further reduced because the number of unique emails is less than 575, but he did not say how many of the emails he received were duplicates.

[16] Regarding the preparation times the township provided, the appellant submits

that the majority of the redactions were for the contact information of committee members, which he says does not constitute personal information under the *Act* as they are working in an official capacity. He also submits that these redactions were not consistently applied, with some email contact information being redacted in certain sections while not redacted in others.

[17] He also takes issue with the actual preparation time cited by the township. Referring to Order MO-1380, he explains that the IPC has previously found that identifying records requiring severing is not allowable under the *Act*, as this is part of the institution's general responsibilities. He submits that the 32 hours that he was charged for preparing the records for disclosure seems to consist of reviewing the records for release and what he calls the inconsistent severing of contact information. He states that of the 586 records he received, only ten had redactions. He states that he should not be have to pay for records to be reviewed to determine if redactions are needed.

[18] Overall, the appellant submits that he should be charged \$15.00 for the searches conducted for the records, \$20.00 to prepare the records for disclosure, and \$10.00 for the USB key, for a total fee of \$45.00. He requests that a refund of \$1465.00 be ordered.

The township's reply representations

[19] The appellant's representations were provided to the township for reply, particularly regarding the appellant's submissions about the duplicate records, search times, and preparation times. In reply, the township explained the search times by stating that records were kept in separate locations such as on computers, shared drives, and email inboxes. They did not provide specific representations on the disparity of search times between employees. They reiterated that to remove duplicate records would have taken additional time, increasing the fee. Regarding the redactions, they confirmed their rationale for redacting information under the *Act* and disputed the appellant's claims about such information not being exempt from disclosure.

[20] There was also a dispute in the representations about whether the appellant had a right to appeal the fee after paying it, with the appellant asserting that the township was implying that he was not able to, and the township stating that they did not say this. As it is clear that the appellant has a right to appeal the fee, I will not discuss this further.

Analysis and finding

[21] The fee provisions of the *Act* establish a user-pay principle, which is founded on the premise that requesters pay the prescribed fees associated with processing a request. In determining whether to uphold a fee, my responsibility under section 57 of the *Act* is to ensure that the amount charged is reasonable. The township has the

burden of establishing that the fee is reasonable and must provide me with detailed information and sufficient evidence as to how the fee was calculated in accordance with the provisions of the *Act*.

[22] I have carefully reviewed the representations of each party, and I find that I have not been provided with sufficient evidence to determine that the fee of the township is reasonable. Accordingly, I will only uphold it in part. The township provided a breakdown of the fee, with separate sections for searches and the preparation of the records. I discuss each section below.

Section 45(1)(a) – search

[23] The township's breakdown states that 15 employees spent a total of 18 hours searching for responsive records. The township did not provide information about how many records were searched to find responsive records or how each employee spent their time. It is not clear from the parties' representations what the exact breakdown of record type was, but the appellant submits that he mainly received emails, which he submits are easily searchable. Previous IPC orders have found that when searching through emails, a search time of one minute per email was reasonable.¹

[24] I have reviewed the evidence provided by the township, and I am not satisfied that they have established that the fee charged for searching for records was reasonable. In particular, I agree with the appellant's position that there is a significant disparity in how long it took each township employee to search for records. One employee took nine hours to search for 82 records, while another took 12 minutes to find 200. I asked the township to explain this difference in reply, but aside from stating that the search times they provided were not unusual, they provided little explanation. Additionally, they did not provide evidence about what the employee who spent nine hours was doing while searching for records. For example, if it were the case that this particular employee had significantly more emails to search through than the others, the time spent may be reasonable. However, the township has not provided an explanation.

[25] I do not accept that, as the appellant suggests, a new search time should be calculated using the employee who spent the least time searching as a standard. However, in the absence of evidence from the township addressing the disparity, I agree that the total search time should be reduced to address it. In the chart that the township provided, the employee who spent the second most time searching for records spent 2.5 hours doing so, with the other employees spending anywhere from two minutes to 1.75 hours. Considering the range provided by the township, I find that reducing the time of the employee who spent nine hours to that of the second highest search time of 2.5 hours appropriate in the circumstances, reducing the total search time by 6.5 hours.

¹ See, for example, MO-3014 and PO-4170.

[26] Additionally, the township did not adequately explain why the appellant was charged for employees searching for duplicate records. I understand the township's position that to remove duplicates would take additional time, but I do not agree that the appellant should be charged for multiple employees searching for the same record. Based on the appellant's representations, which the township did not dispute, he received up to 12 copies of various types of records, many of which appear to have been found by different employees.

[27] It is not clear based on either party's representations exactly how many records were actually duplicates, and how much time was spent searching for each duplicate by different employees. The appellant submits that the number of unique documents is significantly less than what the township claimed, but he did not provide evidence of what the actual number was. In any case, the onus is on the institution to demonstrate that their search times were reasonable. The township did not explain why the search was coordinated in a manner that had produced so many duplicates, or why it was necessary to conduct the search in this manner. Previous IPC orders have reduced the search fee to account for duplicated emails.²

[28] Considering the representations of both parties, I find that a search fee reduction of 10%, in addition to the reduction discussed above, is reasonable in the circumstances. Accounting for the 6.5 hour time deduction and further reducing the fee by 10% to account for the duplicate records, the new fee for the search (originally \$540.00) would be calculated as \$310.50.

Section 45(1)(b) – preparation

[29] The township charged the appellant for 32 hours of preparation time. Based on the township's representations and correspondence with the appellant, the township provided all of the records on a USB key, and the 32 hours represented time spent severing the records. In his representations, the appellant disputed the amount of time that was spent severing the records. He explained that of the 586 records he received in the first part of his request (which represent the records he was charged for), only ten had redactions. He states that the files with redactions had an average of two pages per file, and he should have only been charged for a total of 20 pages of redactions. The appellant submits that he thinks he was charged for reviewing the records themselves, rather than the actual redactions.

[30] I asked the township to respond to the appellant's representations on the amount of time that was spent preparing the records for disclosure. They did not provide additional information, other than to state that the time was spent preparing the records for disclosure. Based on the township's limited explanation of what the 32 hours spent preparing the records actually represented, I agree with the appellant's position that he was charged for reviewing the records themselves, rather than the

² Orders MO-3980, MO-3446, PO-2514 and PO-3480.

actual severing.

[31] Considering the totality of the evidence before me, I am not satisfied that the township has established that the preparation fee was calculated in accordance with the *Act*. In Order MO-1380, the adjudicator found that time spent identifying which records require severing is not allowable under the *Act*. With respect to the actual severing, the IPC has previously found that it takes two minutes per page to sever exempt information on pages with multiple severances.³ Based on the what the appellant provided, which the township did not dispute when given the opportunity to, the appellant received 20 pages of redacted records, for a total severing time of 40 minutes. At \$7.50 per 15 minutes, this results in a preparation fee of \$20. With the \$10 fee for the USB key, which was not disputed by either party, the fee for preparing the records is \$30, plus the search fee of \$310.50.

[32] I make this finding understanding that it is a significant reduction in the fee charged to the appellant, and knowing that the township provided a significant amount of records to the appellant. However, the onus is on the institution to explain how the fee was calculated, particularly when such a significant amount of time was spent preparing the records for disclosure. Based on the township's representations and reply representations, I am not satisfied that they have provided an adequate explanation.

[33] The appellant also disputed the necessity of many of the severances, stating that the information severed was not personal information and was not exempt from disclosure under the *Act*. During mediation, the appellant confirmed that he was not challenging the exemptions claimed by the township regarding the records, and this was not an issue before me in the appeal. Accordingly, I will not make a determination on whether the township correctly applied the exemptions in the *Act* when severing information, and I will not reduce the fee further.

ORDER:

I uphold the township's \$10.00 fee for the USB key, but order that the preparation fee be reduced from \$960.00 to \$20.00. I order that the search fee be reduced from \$540.00 to \$310.50, for a total fee of \$340.50. As it is not disputed that the township has already received a payment of \$1,510.00, I order the township to reimburse the appellant \$1,169.50.

Original signed by: _____
Chris Anzenberger
Adjudicator

_____ October 12, 2023

³ Orders MO-1169, PO-1721, PO-1834 and PO-1990.