

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4476

Appeal MA23-00069

City of Windsor

December 22, 2023

Summary: The City of Windsor (the city) received an access request under the *Municipal Freedom of Information and Protection of Privacy Act* for records related to specified properties. The city issued an access and fee decision granting partial access to responsive records. The appellant appealed the amount of the \$256.80 fee. In this order, the adjudicator orders the final fee be reduced to \$175.45 as some of the responsive records 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, section 45.

OVERVIEW:

[1] The City of Windsor (the city) received a 12-part request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for information pertaining to city standards and by-laws, specified addresses and a named individual.

[2] The city contacted the requester who narrowed the request as follows:

Information pertaining to [two specified addresses]. If the following points pertain to any other home owners, I do not require those. Just information on these two properties.

1. What were the orders to comply? I am looking for the instructions given to the home owners to restore public property.
2. Information on the inspections that were conducted to conclude that the orders to comply were followed. (any reports, dates, notes, conclusions, etc.) What are the standard operating procedures/policies for inspecting orders to comply?
3. I would also like any information that pertains to my own property (the letters of intent to purchase, mailed notices of alley closure and city hall meetings etc. not required as those would be redundant)."

[3] The city issued a decision granting partial access to responsive records with severances pursuant to section 14 (personal privacy) of the *Act*, and charging a fee of \$256.80 representing 6 hours of search time, 128 minutes of preparation time and the photocopying of 64 pages. The requester (now the appellant) appealed the city's fee to the Information and Privacy Commissioner of Ontario (IPC).

[4] During mediation, the appellant confirmed that she objected to the fee, and the city confirmed that it was maintaining its decision. Further mediation was not possible, and the file was moved to the adjudication stage, where an adjudicator may conduct an inquiry. I sought and received representations from the city and the appellant. Reply representations were sought from the city, but they continued to rely on their original representations and only provided brief reply submissions. Representations were shared in accordance with the IPC's *Code of Procedure*.

[5] For the reasons that follow, I order a partial reduction of the fee as some of the responsive records contain the appellant's personal information.

DISCUSSION:

[6] The sole issue in this appeal is if the city's fee is reasonable.

[7] 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.

[8] More specific fee provisions are found in sections 6 and 6.1 of Regulation 823. Section 6 applies to general access requests, while section 6.1 applies to requests for one's own personal information:

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 personal information if

those costs are specified in an invoice that the institution has received.

Representations

The city's representations

[9] The city submits that the fee estimate was calculated in accordance with section 45 and Regulation 823 of the *Act*, and that as required under section 45(3), a fee estimate was provided to the appellant as the calculated fee of \$256.80 was greater than \$25. The city states that a letter was sent to the appellant providing a detailed breakdown of the fee and how it was calculated, and the appellant is required to pay the fee before further steps are taken to process the request. The city submits that the letter sent to the appellant also included the option to narrow the search request parameters to reduce the fee.

[10] The city submits that the fee was based on the work done to respond to the request and the review of all records responsive to the request. It states that the search was done by experienced staff familiar with the subject matter of the request in the Public Works – Right-of-Way Department and Building & Planning Department.

[11] The following breakdown was provided:

- a. Photocopying and computer costs: 64 pages at 20 cents per page for a total of \$12.80.
- b. Time spent manually searching for a record: 6 hours at \$30 per hour for at total of \$180.00.
- c. Time spent preparing record for disclosure: approximately half of 64 pages (double-sided) required severing, at 2 minutes per page for 2.13 hours time spent severing, at \$30 per hour for a total of \$64.00.

[12] The city states that the photocopying and computer costs are based on the actual number of pages of responsive records (64 double-sided pages). It states that approximately half of the pages were subject to severing in accordance with the *Act*.

[13] The city submits that the time spent searching for records is based on a search time of six hours. The city states that the actual time to complete the search was 17 hours, but the time was reduced due to duplicate records from the two departments following a review of the records and consultations with the two departments. It submits that the requested records are kept in paper files, digital files, the city's electronic document system (Livelink), emails, the city's EIS system, and online drawings and maps. It states that the records are maintained per the city's Records Retention By-law at various city locations, including offsite storage for physical records.

[14] The city submits that locating the requested records required the review of paper files, digital files, emails and other internal and external correspondence, Council agendas, reports and minutes, the city website and online applications (EIS, MapMyCity, and others), Livelink for contracts, and paper files stored in offsite storage.

[15] The city states that these calculations are in accordance with the *Act* and regulations, and that there was no bad faith, improper purpose, failure to take into account relevant considerations, or consideration of irrelevant considerations in calculation of the fee estimate.

The appellant's representations

[16] The appellant raised general concerns about the city's handling of her access request, stating that she did not receive a response from the city until she filed an appeal with the IPC for a deemed refusal. She also raised concerns about the initial fee estimate the city provided prior to her search being narrowed being too high.

[17] She submits that the city should have used less staff to conduct the search, stating that the city's search seemed like an inefficient use of resources that she felt was being used solely to increase the cost of access. She states that she understands that the city reduced the search time due to duplicate records being found, but still felt that it was inefficient. She also states that the records should be contained in a single file or two, rather than being in several different locations that require searches by multiple employees.

[18] The appellant further submits that the city should not have searched 311 in the context of her request as it would not have produced records that were responsive to her request. She states that this is also true for searches of the city's property tax systems, as nothing in the request was related to property taxes. The appellant also states that the decision letter she received, as well as the information she received throughout the appeal process, did not specify if the records at issue contained her personal information, and whether she was charged for search and preparation time of records that contained her personal information, contrary to the *Act*.

The city's reply representations

[19] The appellant's representations were provided to the city for a reply, specifically regarding the appellant's submissions on why the 311 and property tax systems were searched, and whether the responsive records contained her personal information. In reply, the city stated that they continued to rely on their original representations, but submit that the city's standard procedure is to require that any city department that "might or could have responsive records" to conduct a search. The city also submits that the property tax software that was searched is also the city's data repository for enforcement and property related matters.

Analysis and finding

[20] 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 45(5) of the *Act* is to ensure that the amount charged is reasonable. The city 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*.

[21] I have carefully reviewed the representations of each party, and I find that, while I generally agree with the city's calculation of the fee, I have not been provided with sufficient evidence to determine that the entirety of the fee is reasonable. Accordingly, I will only uphold it in part.

[22] I do not agree with the appellant's submissions on the amount of time being spent on the search being unreasonable. I understand the appellant's concerns about duplicate records being produced by the city in response to the request, but the city did not charge her for the time spent searching for the duplicates, reducing the actual search time of 17 hours to 6 hours. Furthermore, although there are some requirements for institutions to have proper information management practices, institutions are not obligated to maintain records to accommodate the various ways in which an access request may be framed.¹Based on the information before me, I find that the city has established that the search time was reasonable.

[23] Additionally, I am not persuaded by the appellant's submissions that the city searched additional locations to increase the cost of the access request, particularly given the complexity of the appellant's request, even after it was narrowed. The city has provided a reasonable basis for the locations they searched, and I find that there is at least some connection between all of the locations that the city searched and the appellant's request.

[24] However, as the appellant submitted, the city did not explain if the records at issue contained the appellant's personal information or whether she was charged for searching for and preparing the records. Although the exemptions claimed by the city were not at issue in this appeal, during the earlier stages of the appeal process the city provided the records to the IPC. I have reviewed the records at issue, and based on my review, approximately one-third of the records appear to contain the personal information of the appellant.

[25] As outlined in section 6.1 of Regulation 823, the city cannot charge for the search and preparation of records containing the requester's personal information. In the absence of representations from the city on this subject, I find that the city should

¹ Orders M-583 and PO-3206.

not have charged the appellant for search and preparation of records containing the appellant's personal information, and I order the fee reduced in part.

[26] Based on what the city provided, the appellant was charged \$180.00 for searching, and \$64.00 for preparation, for a total of \$244.00. Accounting for the records containing the appellant's personal information, the fee should be reduced by one-third, for a new fee of \$162.65. Including the \$12.80 that the city charged for photocopying and computer costs, which I uphold, the new fee is \$175.45.

ORDER:

1. I uphold the city's fee for photocopying and computer costs, but order the city to reduce the search and preparation time by one-third to account for records containing the appellant's personal information, for a new total fee of \$175.45.

Original Signed By: _____
Chris Anzenberger
Adjudicator

December 22, 2023 _____