

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-4569

Appeal MA22-00064

City of Greater Sudbury

September 25, 2024

**Summary:** An individual requested statistical records relating to an animal control services provider that the city had contracted with. This included a request for the number of animals euthanized, and the reasons for the euthanization, for a five-year period. The city provided a fee estimate of \$33,333.00 based on the quote provided by the animal services provider. The adjudicator finds that the fee estimate is unreasonable and reduces the fee to \$11,111.00.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O., 1990, c. M.56, as amended, s. 45(1); R.R.O. 1990, Reg. 823, s. 6; *Municipal Act, 2001*, S.O. 2001, c. 25, section 106.

**Orders and Investigation Reports Considered:** Orders MO-3832, MO-4116, PO-3466, and PO-3857.

### OVERVIEW:

[1] This appeal involves a request for statistical information about euthanized animals gathered by an animal control services provider (the organization) contracted by the City of Greater Sudbury (the city) to provide such services.

[2] The appellant made a request to the city for access to this information, pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*). This matter has been ongoing for many years, and the Information and Privacy Commissioner of Ontario (IPC) has issued two previous decisions regarding the access

request.<sup>1</sup> The current appeal relates to the city's interim fee estimate decision of \$33,333.00 to provide the requester with the records.

[3] The request to the city was for the following:

Please provide the following statistics (separate information for each shelter or pound, separate information for dogs and cats) for the past 5 years:

([A named animal control service provider] and City Animal Services)

- Number of animals to enter each shelter
- Number of animals returned or claimed by owner
- Number of animals adopted
- Number of animals euthanized and the reason why - medical or behavioral
- Number of animals - if any - sold or gifted to a research facility or a similar program
- Number of animals gifted or sold to research facilities returned after to shelter for adoption vs. number euthanized

Please provide all requests from research facilities asking for animals from each shelter - including any emails and or any other correspondence relating to animals for research.

[4] The city issued a decision granting partial access to the records, and the appellant appealed the city's decision to the IPC, raising the reasonableness of the city's search for responsive records. During that appeal, the appellant questioned the city's search partly on the basis that some documents appeared to be missing. The city asserted that it did not have custody or control over some records that the appellant identified as missing, because these were records belonging to the organization. The city's position was that the appellant should instead contact the organization directly about those records.

[5] Order MO-3832 was issued, in which the adjudicator found that any responsive records in the custody of the organization were within the city's custody or control. The city was ordered to request these responsive records from the organization and issue an access decision on any records provided.

[6] In accordance with Order MO-3832, the city requested that the organization provide it with responsive records. Subsequently, the city issued a decision stating that

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<sup>1</sup> Orders MO-3832 and MO-4116.

no additional records responsive to her request could be produced:

[The organization has] advised that they use a custom database that does not have the capacity to produce records to respond to your request. Additionally, to create a process or query function capable of producing a responsive record would unreasonably interfere with the operation of the institution.

[7] The city relied on section 1 of Regulation 823, which states that “[a] record capable of being produced from machine readable records is not included in the definition of “record” for the purposes of the *Act* if the process of producing it would unreasonably interfere with the operations of an institution.”

[8] The appellant appealed that decision, which is the subject of Order MO-4116. The sole issue in that appeal was whether the records in the custody of the organization were “records” under the *Act*. The city took the position that the organization did not have sufficient resources to produce a record, and that to do so would unreasonably interfere with that organization’s operations. The city noted that the organization used a different computer system than the city, and that it did not have the capacity to produce reports similar to what the city had previously provided to the appellant. The city stated that the organization’s computer system does not include the same functionalities to query and report on reasons for euthanasia.

[9] Based on the information before him, the adjudicator in Order MO-4116 determined that the city had custody and control of the information responsive to the request. He noted that the city chose to contract with the organization to perform a city function and having done so:

...the city cannot divest itself of its responsibility and accountability in relation to records directly related to that city function, which, but for the interposition of the named former animal control service provider, would clearly have been within both the city’s custody and control.

[10] The adjudicator determined that the appropriate question was whether producing a record would unreasonably interfere with the city’s operation, not the effect it may have on the organization’s operation. He found that he was satisfied that the responsive information could be provided by the organization without unreasonably interfering with the city’s operations, and that the only issue would be the cost.

[11] The adjudicator reminded the city of the fee provisions set out in section 45(1) of the *Act* and subsections 6(5) and (6) of Regulation 823. He then ordered the city to conduct further searches for responsive records, in collaboration with the organization, and to issue a new decision to the appellant, with recourse to the fee provisions, as appropriate.

[12] Following Order MO-4116, the city conducted a further search and issued an

interim fee estimate decision to the appellant in the amount of \$33,333.00. The city explained that this amount had been arrived at because the request was for records over a five-year span and the organization advised that there were approximately 2,000 records per year which would each require two minutes to review. This interim fee estimate decision is the subject of the current appeal.

[13] As no resolution was reached during mediation, the appeal was moved to adjudication where an adjudicator may conduct an inquiry. The adjudicator decided to conduct an inquiry and sought and received representations from both the city and the appellant. The appeal was then transferred to me.

[14] I determined that I required additional information from the city regarding how the organization had calculated the fee, and any efforts made to minimize the fee charged. I sought and received that information from the city before closing the inquiry.

[15] In this order, I find that the city's fee estimate of \$33,333.00 is unreasonable and reduce the search fee estimate to \$11,111.00.

## **DISCUSSION:**

[16] The sole issue to be determined in this appeal is the reasonableness of the city's fee estimate of \$33,333.00.<sup>2</sup>

[17] Institutions are required to charge fees for requests for information under the *Act*. Section 45 governs fees charged by institutions to process requests.

[18] Under section 45(3), an institution must provide a fee estimate where the fee is more than \$25. The institution can require the requester to pay the fee before giving them access to the record. If the estimate is \$100 or more, the institution may require the person to pay a deposit of 50 percent of the estimate before it takes steps to process the request.

[19] The purpose of the fee estimate is to give the requester enough information to make an informed decision on whether or not to pay the fee and pursue access. The fee estimate also helps requesters decide whether to narrow the scope of a request to reduce the fee.

[20] 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>3</sup>

[21] Section 45(1) sets out the items for which an institution is required to charge a

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<sup>2</sup> While the city's representations addressed the matter of fee waiver, I could find no indication from my review of the file that the appellant requested a fee waiver from the city, or that the city issued a decision that addressed fee waiver. As such, fee waiver is not at issue in this appeal.

<sup>3</sup> Orders P-81 and MO-1614.

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.

[22] More specific fee provisions are found in sections 6 and 6.1 of Regulation 823. Section 6 applies to general access requests, and the relevant provision is part 6, which reads as follows:

The following are the fees that shall be charged for the purposes of subsection 45 (1) of the Act for access to a record:

...

- 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 of the parties**

[23] The city states that the fee "represents the time it would take knowledgeable [organization] staff to sift through their records, locate those that related to euthanized animals, search the file for any mention of the reason the animal was euthanized, then record the results using the parameters set out in the request." The city also notes that it does not require the organization to track reasons for why an animal is euthanized and speculates there may be little information to provide.

[24] The city also states in its representations that it elected not to charge fees for time needed for city staff to sever records, create new statistical records, or create a copy. The city states that it "only seeks to recover any costs that would be invoiced by [the organization]."

[25] The city notes that the legislative provisions "seek to establish a user-pay access system which allows institutions to recover certain costs including invoiced costs incurred in relation to locating, retrieving, processing and copying records." The city states that

the organization "has clearly indicated that completing the search would be particularly burdensome," and that it would seek recovery of its costs for doing so. The city expressed that it seeks to transfer this burden to the appellant, stating that it is permitted to do so under the legislation.

[26] When asked if it had inquired with the organization about the possibility of conducting the search in a more cost-effective manner, the city responded that the organization was in the best position to determine how to proceed with the search of its custom-built system. The city further stated that it trusts that the organization provided accurate information within its search estimate, including taking into account any available efficiencies. The city also took the position that the organization's estimate of two minutes of review time per page is reasonable.

[27] The city also states that if it was required to bear the burden of the costs of a search, that may be a contravention of section 106 of the *Municipal Act*.<sup>4</sup> Its argument is based on the possibility that the organization may be required to upgrade their system by developing query tools to facilitate a search. If the cost of doing so is borne by the city, this may be considered bonussing contrary to section 106 of the *Municipal Act*, as the organization would obtain an upgraded system paid for by municipal funds.

[28] The appellant states that the fee estimate is very unfair. She states that she should not bear the burden for what she describes as the organization's poor record keeping and record retention. She also suggests that if the city did not include a record keeping clause in the contract with the organization, they should "absolve the costs after they tell their former contractor to come up with a reasonable and not laughable amount." She states that she does not believe that the search would actually cost the organization the amount set out in the fee estimate.

### **Analysis and finding**

[29] In this case, the fee estimate is entirely based on a brief quote from the organization, setting out its estimate of the cost of reviewing its records to find the number of animals euthanized and the reasons for doing so for a five-year period. The quote approximates that there are 2000 records for each of the five years requested and provides a cost of review of \$100 per hour. The organization stated in the quote that it estimated a time of two minutes for each record to be "found, examined and recorded."

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<sup>4</sup> Section 106 of the *Municipal Act* reads in part as follows:

106 (1) Despite any Act, a municipality shall not assist directly or indirectly any manufacturing business or other industrial or commercial enterprise through the granting of bonuses for that purpose.

- (2) Without limiting subsection (1), the municipality shall not grant assistance by,
- (a) giving or lending any property of the municipality, including money;
  - (b) guaranteeing borrowing;
  - (c) leasing or selling any property of the municipality at below fair market value; or
  - (d) giving a total or partial exemption from any levy, charge or fee.

The quote includes no further details.

[30] The city states that their fee estimate represents the costs of what the organization would invoice the city for. The city states that it is permitted to pass on the entirety of these costs to the requester, relying on part 6 of section 6 of Reg. 823, which lists the fees that shall be charged for the purposes of subsection 45(1) includes:

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.* [Emphasis mine]

[31] As a starting point, previous IPC orders have found that a quote, as opposed to an actual invoice, can satisfy the "specified in an invoice" requirement in paragraph 6 of s. 6 of the regulation.<sup>5</sup> I agree with that reasoning, and adopt it here.

[32] However, the IPC has long held that the fee provisions in the *Act* must be applied in a reasonable and rational manner. This was set out in Order P-6, one of the earliest decisions of this office, in which the adjudicator stated:

[O]ne of the fundamental purposes of the *Act* is to facilitate access to government information promptly and at the lowest cost to the public. The Legislature's intention to include a "user pay" principle in the *Act* is clear from the wording of section 57, but I feel strongly that the government must apply this section in a way that is both reasonable and rational. It is incumbent on an institution to demonstrate that the actual fee ultimately determined meets this reasonable and rational test.

[33] The IPC has previously found that the requirement that a fee be reasonable and rational applies to fee estimates based on invoices. In Order PO-3857, the Ontario Lottery and Gaming Corporation (OLG) obtained three estimates to blur the faces in a video. The OLG chose to provide a fee estimate based on a \$700 quote, despite also having received a much lower quote of \$150 for the same work. The OLG stated that it did so because its analyst was more confident in the services provided by the mid-range vendor, based on her conversations with staff at other institutions.

[34] The adjudicator in that case cited Order P-6 for the requirement that fee estimates should be reasonable and rational. He stated that the mid-range vendor having successfully provided services to another institution was not a reason to reject a lower quote. He found that that the lowest bid was reasonable, keeping in mind the previous finding that one of the fundamental purposes of the *Act* is to facilitate access to government records at the lowest cost possible to the public.

[35] While numerous IPC orders have addressed invoices, these usually involve a situation in which an institution received a records request that it cannot address on its

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<sup>5</sup> See Orders MO-2764 and MO-2595.

own (as was the case in Order PO-3857). The institution reaches out to an outside expert with greater technological capability or knowledge, and then invoices for this expert work. This may occur, for example, when the institution needs to have audio files redacted<sup>6</sup> or videos blurred<sup>7</sup> to preserve personal privacy, as occurred in PO-3857. Sometimes a consultant may be needed to perform computer searches that in-house staff do not have the expertise to do.<sup>8</sup>

[36] However, in the case at hand, the organization is not being sought out as an outside agency who can assist due to its expertise. It has been tasked to do the searches because it had previously had a contract with the city and therefore holds the relevant records. As the adjudicator in related Order MO-4116 noted, these are records that "but for the interposition of the [organization], would clearly have been within the city's custody and control."

[37] The question of how to address a fee estimate provided by an existing service provider searching records held on behalf of an institution also occurred in Order PO-3466. In that case, an individual requested all call logs and recordings between himself and the OLG for an eight-year period. These records were in the possession of OLG's telephone services provider. The telecom provided OLG with an estimated cost of \$15,000 to perform the search and outlined the steps needed to do so in a letter to OLG. The letter stated that in order to conduct the search, the telephone services provider would need to: retrieve all available off-site backup tapes and try to restore as many as were available; write all necessary scripts to do a custom restore of the data; and extract the data and produce a report with adequate detail. The requester appealed that fee estimate.

[38] During the appeal process, OLG contacted the telecom and obtained a more detailed list of activities necessary to conduct the search for responsive records and provide these to OLG. This breakdown included eight separate steps and their associated costs, which added up to the \$15,000 fee estimate. OLG also provided evidence from its Director of Technical Services, who stated that he expected that the fee estimate might actually be too low, partly due to the fact that it was based on the cheapest per person per day rate, and that higher priced resources may be required.

[39] In that case, the adjudicator acknowledged that the fee estimate was difficult to assess because it was hard to know exactly what work would be required or the time it would take, prior to the work beginning. However, he noted that "an invoice should provide some detail about the nature of the work to be performed." While the original letter did not provide much detail, the adjudicator noted that during the appeal OLG had "devoted considerable effort to obtaining further information about the required scope of work." The adjudicator found that this additional detailed information was sufficient to

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<sup>6</sup> PO-3027

<sup>7</sup> See, for example, Orders PO-3857 and PO-4128

<sup>8</sup> PO-2214



justify the fee estimate, which he ultimately upheld as reasonable.

[40] While the circumstances in Order PO-3466 and the present case differ, I agree that an invoice should provide some detail about the nature of the work to be performed. I also note that the institution in that case followed up with its service provider to obtain greater details on why it was necessary for the institution to charge the fee that it did.

[41] The case before me lacks a level of detail similar to that demonstrated in Order PO-3466 as to why the organization calculated the fee estimate amount. The organization simply states that "each record will have to be found, examined and recorded then the results compiled." To do so, they based their estimate on the total number of records and a review time of two minutes per record. At a rate of \$100 per hour, this results in a total fee estimate of \$33,333.00. While the city has indicated how the fee estimate was calculated, it has not provided the detailed breakdown of the fee that is required of institutions.<sup>9</sup>

[42] The invoice provided by the city is an email from the organization that contains the above calculation. It does not include any additional details about the search efforts or the organization's computer search capabilities. No explanation is provided as to why *each record* would require review time of two minutes, when presumably only a subset of those records – those involving euthanization – would require review to determine the reason that euthanization was performed.

[43] The city states that "conducting a search to produce a record would require a search parallel to that of a paper copy records search or requiring the alteration, if feasible, to [the organization's] system." However, they have not explained why this is the case or whether the organization has explored other options. While I understand that the specifics of the organization's search capabilities or processes may not be within the city's knowledge, it was open to them to ask for further details when they received a fee estimate of over \$33,000, as the institution in Order PO-3466 did. They chose not to do so, instead relying on an invoice containing only a bare calculation.

[44] I also note that during the adjudication process, I asked the city if it had contacted the organization to ask if it could explore more cost-effective means of searching for the records. In particular, I asked whether the city had explored the possibility of having the organization first search for the records of euthanized animals, and then reviewing only those records. The city's response was that "it trusts that the [organization] has provided accurate information and took into account any possible efficiencies available."

[45] While the city may well trust the organization's assessment, as an institution subject to the *Act* it is obliged to apply the user-pay system set out in section 45 in a way that is reasonable and rational. This includes facilitating access to records at the lowest cost to the public. Accepting a fee estimate of \$33,333.00 based on a bare calculation,

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<sup>9</sup> Orders P-81 and MO-1614.

without asking for more details of the search and reasons why it could not be accomplished in a more cost-effective matter, is not a reasonable or rational approach to making a fee estimate decision. The city has not provided sufficient evidence to satisfy me that \$33,333.00 is a reasonable fee to charge for the search required to obtain the responsive records.

[46] I accept the organization's estimate that it has 10,000 records from the five-year time span, and that some fraction of those animals were euthanized. A report commissioned by the city<sup>10</sup> and made publicly available provides some idea of what this fraction may be. That report indicates that in 2014, euthanasia was the listed outcome for approximately one-third of the organization's animals. I accept that two minutes is a reasonable estimate of the time required to review each record involving a euthanized animal to determine the reason for euthanization. Having regard to all the information before me, I reduce the time for the search by two-thirds, for a total fee of \$11,111.00.

**Application of section 106 of the *Municipal Act***

[47] In its representations, the municipality states that if it is required to bear the burden of the costs of a search, this could potentially be a contravention of section 106 of the *Municipal Act*. This is based on their argument that if the search fee is not allowed, the organization may be required to upgrade its records system and develop query tools to facilitate a search. The city argues if the cost of upgrading its records system or developing query tools is borne by the city, this may be considered bonussing, as the organization would obtain an upgraded system paid for by municipal funds.

[48] The authority granted to me under the *Act* is to determine whether the city's fee estimate decision is reasonable. I do not have the authority to determine how the city or the organization is to conduct the search, and I have not made any order that the organization upgrade its records system. The city and the organization are free to determine the tools or other resources required to conduct an appropriate search that generates a fee estimate that is reasonable in the circumstances. The city may wish to do so while also keeping in mind any relevant obligations under the *Municipal Act*.

**ORDER:**

1. I do not uphold the city's fee estimate as reasonable.
2. I reduce the city's fee estimate to \$11,111.00

Original Signed by: \_\_\_\_\_  
Jennifer Olijnyk

September 25, 2024 \_\_\_\_\_

<sup>10</sup> "Evaluation of the City of Greater Sudbury's Animal Control Services," Matrix Consulting Group, available at <https://pub-greatersudbury.escribemeetings.com/filestream.ashx?documentid=12076>, outcome information listed at page 14.

Adjudicator