

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4608

Appeal MA23-00181

City of Peterborough

December 27, 2024

Summary: An individual asked the city for records related to Next Generation 911. The city initially provided the individual with a fee estimate of \$1180, but after processing the access request, it provided the individual with a final fee of \$990. The individual disputes that the fee is reasonable. In this order, the adjudicator orders the city to reduce the fee to \$645.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 45(1), 45(3); Regulation 823, section 6.

OVERVIEW:

[1] This order determines whether a fee charged by the City of Peterborough (the city) to process the appellant's access request is in compliance with the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) and regulations.

[2] The city received a request under the *Act* for access to the following records:

Next Generation 911 Readiness Assessment Survey document, Computer Aided Dispatch upgrade request for proposal, all Request for Proposals related to upgrade the Peterborough Fire Communications Centre related to Next Generation 911, all related notes, email correspondence, transcripts, recordings, records, documents, reports and communications. Reports and any and all documents, correspondence and communications to City Council regarding progress and costing of Next Generation 911

upgrading as well as applications for Next Generation 9-1-1 Transition Funding Supports from the Solicitor General of Ontario.

[3] Prior to issuing an access decision and pursuant to section 45(3) of the *Act*, the city gave the appellant an estimate of the fee that it would charge to process the request. The fee estimate was in the amount of \$1180. The appellant provided the city with a deposit of 50% of the estimated fee amount and the city continued processing the request. However, the appellant disputed the reasonableness of the fee estimate and appealed the fee estimate to the Information and Privacy Commissioner of Ontario (the IPC).

[4] During mediation, the city removed 6 hours (\$180) of processing time and the cost of a CD-R/USB (\$10) from the fee estimate, reducing the fee estimate to \$990. The city confirmed that it would rely on the revised fee estimate of \$990 in the appeal. The appellant wished to continue his appeal of the city's revised fee estimate.

[5] As further mediation was not possible, the appeal was moved to the adjudication stage of the appeal process. An IPC adjudicator decided to conduct an inquiry, and she sought and received parties' representations. By the time the city was invited to provide representations, it had processed the appellant's access request and set out in its representations the actual time its staff required to respond to the request.

[6] When the appeal was transferred to me to continue the inquiry, I reviewed the parties' representations and determined that I did not need to hear further from the parties prior to making my decision.

[7] For the following reasons, I reduce the fee the city may charge to the appellant to \$645.

DISCUSSION:

[8] The sole issue in this appeal is whether the IPC should uphold the city's fee.

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

[10] Section 45(1) sets out the items for which an institution is required to charge a fee. It states, in part:

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.

[11] More specific fee provisions with respect to general access requests are found in sections 6 of Regulation 823. Section 6 states, in part:

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:

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.

The IPC can review an institution's fee and decide whether it complies with the *Act* and regulations.

City's representations

[12] The city submits that it complied with the *Act* by providing the appellant with a fee estimate. The city says that the fee estimate was based on the estimation by the departments where the records are located that they would require 39 hours to locate responsive records. The city added to that amount a charge of \$10 to provide the records to the appellant on a CD-R/USB.

[13] The city's representations provide the following breakdown of the fee it charges the appellant for the actual time its staff required to process the access request:

Task	Department	Number of hours	Fee
Search time	The Commissioner of Corporate and Legislative Services	3.5	\$105
	Peterborough Technology Services	7	\$210
	Peterborough Fire Services	16	\$480
Records to be provided on CD-R/USB			\$10

Preparing records for disclosure	Clerk's office	8.5	\$255
Total			\$1060

[14] In its representations, the city also provides a "revised total" amount of \$990. The city says that the revised amount was calculated by reducing the number of hours the city spent preparing the records for disclosure.

[15] On the issue of the search time, the city says that it has a comprehensive records management program for effective and efficient storage of records. The city explains that responsive records are maintained in the city's network and employee emails. Due to the volume of responsive records, the city says that its staff spent considerable time identifying responsive emails and documents.

[16] With respect to the preparation of the records for disclosure, the city submits that the records contain 2501 pages and its Clerk's office spent 8.5 hours severing them.

[17] Finally, the city's fee includes a charge of \$10 to provide the appellant with the records on a CD-R/USB.

Appellant's representations

[18] The appellant submits that the fee charged by the city should be reduced because it is unreasonable. In support of his position, the appellant says that other municipalities charged him less (in some cases significantly less) for similar records than the city, either by reducing the fee or by using a more efficient system of searching for records.

[19] The appellant acknowledges that the number of records each municipality has might differ. However, the appellant says that the location of the records and the time needed to collect the records should be similar. The appellant also acknowledges that the time needed to prepare the records might vary depending on the number of pages in the records. However, the appellant points out that the majority of the city's fee is based on the search time by the city's Technology and Fire departments. The appellant submits that it is unreasonable for the city's Fire department to spend more than 3.5 hours to locate responsive records because it took the City of Brampton 3.5 hours to locate all records, which contained over 4500 pages.

City's reply

[20] The city says that it is difficult to compare fee estimates from municipalities because each municipality is structured differently. It says that municipalities with larger budgets, such as the City of Brampton, might have more advanced and efficient search tools at their disposal to process access requests. The city also notes that it has a comprehensive records management program that it continues to enhance, but it may

have different systems and technology than other municipalities.

[21] The city also relies on the vast range of fees that the appellant was quoted by different municipalities to further underscore its position that responses of municipalities to access requests will differ and will depend on municipalities' size, resources and technology.

[22] In response to the appellant's submission about the search time taken by the city's Technology and Fire departments, the city confirms that the number of hours it provided in representations reflects the actual number of hours that its staff spent searching for records.

Appellant's sur-reply

[23] In sur-reply, the appellant addresses the city's arguments about factors that impact a municipality's fee for search time, and about its information and technology systems.

Analysis and findings

[24] The only issue in this appeal is the search time. The city identifies three factors that it considered in calculating the fee: the search time, the preparation of the records, and providing the records on a CD-R/USB. The appellant does not raise a concern about the number of hours the city required to prepare the records. The appellant's representations are about the search time. There is also no dispute that the city relied on the correct rate in accordance with regulations under the *Act* when calculating the fee.

[25] At the outset, it is necessary to confirm the amount of the fee at issue in this appeal. The Mediator's Report states that the city reduced its original fee estimate (in the amount of \$1180) to \$990. The city's calculations summarized above purport to support a fee of \$1060; however, the city only asks that I uphold a fee of \$990.

[26] I find that the city has not provided sufficient evidence to establish that its fee for search time is compliant with the *Act*. I accept the city's submissions that its staff searched in three areas: the Commissioner of Corporate and Legislative Services, Peterborough Technology Services, and Peterborough Fire Services. I find that it was reasonable for the city to search in all three areas because the request is broad. While the request is with respect to one matter – Next Generation 911 – the types of records that the appellant is seeking¹ and the nature of the records² are broad. I conclude that records responsive to the appellant's request are dispersed throughout the city.

¹ The appellant is seeking access to notes, emails, transcripts, recordings, records, documents, reports, communications, correspondence, and applications.

² The appellant is seeking access to an assessment survey, requests for proposals with respect to two separate upgrades, documents with respect to City Council, and funding applications.

[27] However, beyond identifying the areas that were searched and making a general statement about where the records were searched, the city does not provide evidence to explain why it required 26.5 hours to search for the records. The city does not provide information about how the records are kept and what actions its staff took to locate the records. Despite having processed the appellant's request prior to providing its representations, the city does not provide information about how many people were involved in responding to the access request and how many records were located. Further, the city does not explain why the staff required 16 hours to search for records in the city's Fire department.

[28] Since the search in the city's Fire and Technology departments required the greatest number of hours and the city did not provide sufficient evidence to justify that number of hours, I will order the city to reduce the fees for search time in both departments by 50%, which will result in the fees of \$240 and \$105 respectively.

[29] I have considered the appellant's argument that the city's fee is excessive. The appellant says that other municipalities that received the same access request charged a lower fee. The appellant further says that since the access request is for the same records, the time that municipalities require to locate the records should not significantly vary. I do not accept the appellant's argument. Municipalities are separate institutions and might not have the same organizational structure. Without knowing how records are kept within each municipality, how they can be retrieved, and context with respect to specific responsive records, the comparison of search time alone is not relevant to my findings.

ORDER:

1. I reduce the city's fee to \$645. If the fee the appellant has already paid to the city is above \$645, I order the city to refund the difference.

Original Signed by: _____
Anna Kalinichenko
Adjudicator

December 27, 2024 _____