

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-4609

Appeal MA20-00553

The Corporation of the Town of Amherstburg

December 30, 2024

**Summary:** An individual made a request under the *Municipal Freedom of Information and Protection of Privacy Act* to the town for access to records and information relating to third party vendors on the town's website. The town provided a fee estimate and sought a time extension of 30 days to respond to the request.

The individual appealed the town's fee estimate and time extension to the IPC. During mediation, the individual sought a fee waiver from the town. The town denied the fee waiver request.

In this decision, the adjudicator upholds the town's fee estimate, time extension and denial of fee waiver.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 20(1), 45(1), and 45(4).

### OVERVIEW:

[1] The appellant submitted an access request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Corporation of the Town of Amherstburg (the town) for the following records:

- The names of all third-party vendors that the town hosted on the town's website from January 1, 2012, to present.

- Copies of all Requests for Proposals, Requests for Quotes and Tenders for the redesign of the town's website from January 1, 2012, to present.
- Copies of each individual contract for the third-party vendors with the town website from January 1, 2012, to present.
- All the costs of each individual purchase of the third parties' services for the town's website from January 1, 20212 to present.
- All the cost of hosting each of the third parties' services for the town's website from January 1, 2012, to present.

[2] In response, the town issued an interim decision with a fee estimate of \$967.50 and requested a deposit, in addition to claiming a 30-day time extension in which to issue a final decision once the deposit was paid.

[3] The appellant appealed the town's interim decision to the Information and Privacy Commissioner of Ontario (the IPC).

[4] During mediation, the appellant took the position that the town did not rely on her clarified request to arrive at the fee estimate it had issued. The mediator shared the appellant's position with the town, who informed the mediator that it had relied on the clarified wording provided by the appellant to arrive at the fee estimate of \$967.50. However, the town then issued a revised fee estimate of \$892.50 and sought a deposit of \$446.25. The appellant informed the mediator that she objects to the revised fee estimate. Accordingly, the town's revised fee estimate of \$892.50 is at issue in this appeal.

[5] The mediator canvassed the appellant if they were intending to seek a fee waiver from the town under section 45(4) of the *Act*. The appellant informed the mediator they would make a fee waiver request to the town and did so at mediation. The town responded and denied the appellant a fee waiver. The mediator communicated with the appellant about the town's fee waiver decision and the appellant informed the mediator she wished to appeal it. Accordingly, the town's decision to deny the appellant a fee waiver is also at issue in this appeal.

[6] The mediator also asked the town if it was maintaining its position of claiming a 30-day time extension for issuing a final access decision. The town confirmed it continued to maintain its position on this issue. The mediator shared the town's position with the appellant who informed the mediator she objects to the time extension. Accordingly, the town's claim of a 30-day time extension is also at issue in this appeal.

[7] Mediation did not resolve the issues on appeal and the file was transferred to the adjudication stage where an adjudicator may conduct an inquiry under the *Act*. An inquiry was conducted, and representations were received from both the appellant and the town. Representations were shared in accordance with the IPC's *Code of Procedure*.

[8] In this order, I uphold the town's fee estimate and its decision not to waive the fee. I further uphold the town's time extension should the appellant continue to seek the records responsive to her clarified request.

## **ISSUES:**

- A. Should the town's revised fee estimate of \$892.50 be upheld?
- B. Should the fee be waived?
- C. Is the town's 30-day time extension for responding to the appellant's access request in compliance with section 20(1) of the *Act*?

## **DISCUSSION:**

### **Issue A: Should the town's revised fee estimate of \$892.50 be upheld?**

[9] When the institution's fee estimate is \$100 or more, as is the case here, the fee estimate may be based on 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.

[10] 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.

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

[12] More specific provisions regarding fees are found in sections 6, 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.

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.

[13] As a preliminary matter, the parties made extensive representations on whether the town's fee estimate was based on the appellant's clarified request or on her initial request set out above. The town submits that it used the appellant's clarified request to determine its fee estimate and the appellant submits that the town's fee estimate is too high and is based on a broad interpretation of her initial request. The scope of the appellant's request was not before me but given the evidence provided by the parties', I find that the fee estimate is based on the appellant's clarified request.

[14] In particular, I find that the appellant's request, as clarified, is as follows:

- The names of all third-party vendors that provide goods or services to the town relative to its websites whether or note those are internal sections on the town's site or external from January 1, 2012 to present.

- Copies of all requests for proposals, requests for quotes and tenders for the redesign of the town's website issued by the town from January 1, 2012, to present.
- Copies of each individual contract for the third-part vendors relative to the town's websites from January 1, 2012, to present.
- All the costs of each individual purchase of the third party's services relative to the town's websites from January 1, 2012, to the present.
- All the costs of hosting each of the third parties' services relative to the town's websites from January 1, 2012, to the present.

[15] I accept the town's submission that it has chosen to take a broad interpretation of the appellant's clarified request. While the appellant claims the town misapprehended her request to include the phrase "website compliance," I do not note the use of that phrase in the town's phrasing of the clarified request. Further the town's submissions on its fee estimate do not refer to website compliance.

[16] The town submits that it relied on the appellant's clarified request to arrive at its fee estimate of \$967.50 which was reduced to \$892.50 when it waived part of the fee. The town's fee breakdown consists of the following:

Search – 22 hours - \$660

Preparation – 7.75 hours - \$232.50

### ***Search time***

[17] While I have reviewed the parties' representations, I only set out the relevant portions here. The town submits that given the clarified request, the clerk division does not have a single record or source that references the names of all third-party vendors that provide goods or services to the town or on its behalf relative to the town and its websites. The town submits that its work identifying these records continues to the date of its representations and the 6 hours (360 minutes) it has estimated has already been exceeded by two hours.

[18] Regarding the third-party contracts that are requested, the town notes that it maintains these records according to the Municipal Records Management System (TOMRMS). This classifies agreements and contracts into L04 and L14 records. The town maintains an inventory of the associated records that correspond to these record types. The files are then stored physically in a record storage area of the town hall within the clerk's division or in an off-site storage facility.

[19] The town explains that staff assigned to this area and to conduct the search have records management backgrounds and have been responsible for filing many of the

agreements and contracts stored in this area. To ensure that responsive records were being properly identified, the town needed to conduct a manual review of the agreements.

[20] In order to determine its fee estimate, the town decided to look at a representative sample of the agreements to determine the nature of the manual review needed. And given that the agreements can vary in length, the representative sample was used to determine an approximate average number of pages to be reviewed per agreement. The average was 11 pages. Using 11 pages as an average size, it was estimated to take 720 minutes to review the agreements. Including the waiver of 6.5 hours, the time included by the town in its fee estimate was 5.5 hours or 330 minutes.

[21] The town submits that since the records requested are from 2012 to the present, there may be time needed to search for some of the records in storage and there are 464 pages of archival file holdings between the town's offsite locations. The town submits that the records are chronologically entered and has a classification scheme that requires a review of the box holdings to determine the appropriateness of a further review of the contents. The town explains that all the information needs to be reviewed a required a separate representative sample to estimate the time needed to conduct the search. For its representative sample, the town states it determined that 15 minutes of review were needed to review on average 3 pages per minute. Accordingly, a full review would take 2-1/2 hours. With the waiver of 1 hour of search time the estimated time was 90 minutes or 1-1/2 hours.

[22] Finally, the town submits that its fee estimate also includes search time from its information and technology division. The town explains that the information technology division must complete a manual search of records to review general ledger listings for vendor codes from 2012 to present, as well as all domain registration invoicing. This uses the town's accounting software and is constrained in how fast reports can be generated from the computer system. In addition, information technology must coordinate with other areas and have contemplated that part of the estimated time to review relevant records to determine the full extent of web services, providers and vendors.

[23] The town submits that with the results of the previous search, a line-by-line review of the website and web content general ledger postings from 2012 to the present will be conducted. As the town's accounting software has changed since 2012, reports will need to be generated separately in each computer system. A further manual search will also be required to find all vendor's invoices from 2012 to the present utilizing the town's current and previous accounting software solutions. The town further submits that since the request includes a period of time for a non-static form of media to which the town may have archived records (snapshots) relative to previous iterations of the same web content, the search must also include archived web content from 2012 to present. Accordingly, the estimated time is 540 minutes or 9 hours.

***Preparation time***

[24] For the records located in the clerk's division, to prepare the responsive records, the estimated amount is 2 hours and 15 minutes (reduced from 4 hours and 30 minutes). The town submits that this includes severing the records (estimated to be 7,260 pages of contracts and agreements) and compiling the information contained in other records into a new record. For the procurement records, the town submits that there were 16 total bids located during the search with an average size estimated for the winning bid to be 110 pages. This creates an average of 1760 pages to sever or 880 minutes using the two minutes per page calculation for multiple severances. As not all pages are likely to require severing, the town's estimate includes 30 minutes.

[25] For the information technology division, the preparation time is expected to be 270 minutes or 4.5 hours. The town notes that the preparation time is impacted by the speed with which queries can be returned from the town's accounting systems (old and new) and then consolidated into a new record. The town submits that the process to do this labour intensive for staff and the systems and that is why the estimate is high.

[26] The town submits that the fire department also has responsive records included in this request and the 15-minute search time was waived. However, a preparation time of 30 minutes was estimated to allow for the severing of responsive records.

[27] The appellant reiterates her argument that the town's fee estimate is based on an incorrect interpretation of her request. She submits that she did not request the information that the information technology division will be searching for. In particular, the general ledger listings for vendor codes from 2012 to present, the vendor's invoices, as well as all domain registration invoicing.

[28] The appellant also states that she requested the request for proposals and not the procurement records which the town estimates it will have to sever in order to prepare for disclosure. She submits that the request for proposals would have been issued by the town and not the bidders.

[29] The appellant submits that the town's Clerk mentioned two third-party website vendors during the public council meeting: one for each of the fire and tourism departments, not separate entities. The appellant further surmises that there "are probably four third-party vendors relative to the town's website." The appellant suggests that these results can be located quickly via an internet search and/or using the records repository search of the town's documents. The appellant states, "It was the town clerk who publicly disclosed two examples of third-party vendors responsible for non-compliance of the town's website: fire and tourism departments."

[30] The appellant submits that the clerk should have been capable of locating the records and determining the representative sample as the clerk usually signs the contracts on behalf of the town.

[31] Finally, the appellant notes that while the town has set out a number of manual searches in its estimate, it does not mention electronic searches.

[32] In response to the appellant's submissions, the town states that if the appellant is not requesting certain records, she can let the town know, and this will reduce the fee estimate. The town also explains that even though the appellant says she is not looking for certain records her request encompasses all the records it is searching for. The town disputes the appellant's argument that an internet search would be sufficient.

[33] The town also disputes the appellant's argument that the clerk should not require the time estimated to conduct the search for the agreements as they have most likely signed the agreements on behalf of the town. The town explains:

There are different types of agreement, such as agreements under By-law, to which the Clerk has a role, and then there are agreements simple, which are those agreements which are executed based on council direction which do not require a By-law. The first category contains roughly 660 agreements, some of which would have predated the (former) Clerk's employment, but almost all of which now predate the current Clerk. Even if either Clerk had overseen this area for the duration, an adequate search is not considered to have been completed when conducted through memory.

[34] Additionally, the town submits that the appellant's position that a fulsome record of all services on the town's websites should exist given that the town has been working on this project. The town states:

For clarity, there is no record which consolidates all of the services provided on all of the town's websites and who provides them, let alone the costs therein and especially not with a historical perspective of the last ten years. The 'work', identified as continuing, is that of website remediation and ensuring the requirements of WCAG 2.0 Level AA are met, as required under Section 14 of the Integrated Accessibility Standards Regulation of the *Accessibility for Ontarians with Disabilities Act (AODA)* regarding town websites. This is related to Website compliance, not to service provision or agreements and associated costs.

[35] Finally, the town submits that not only are manual searches required but also manual searches using electronic programs for which an individual must enter and direct the search. The town states:

Wherever possible, the town has contemplated using the most time effective and expedient mechanism to perform the request. This will still entail using tools such as data sorting, and compiling, but these will still need to be manually reviewed and manipulated. For example, in the procurement review, staff in that area performed a visual scan of the



associated digital files and identified those that were germane to this request within the time period noted from among the digital holdings. If the above noted reduction in scope for not requiring the inclusion of bidder documentation, this this previous identification serves the purpose of providing a ready roadmap to enable staff to pull the town issued RFP documentation, negating the need for additional works beyond the initial 15-minute search.

### ***Analysis and finding***

[36] I uphold the town's amended fee estimate of \$892.50 dollars which was based on a review of a representative sample of the responsive records.

[37] I find the town's initial fee estimate to have been lacking detail as to the areas to be searched and the necessary preparation. The purpose of a fee estimate is to give the requester, in this case the appellant, sufficient information to make an informed decision on whether or not to pay the fee and pursue access. I accept that the appellant was provided with further detail at the mediation stage, but a more detailed fee estimate at the initial stage could have given the appellant the information she needed to determine whether to pursue access to the various parts of her request. However, I find the lack of detail about the fee estimate has been remedied by the mediation and the inquiry of the appeal.

[38] I accept the town would take the estimated 22 hours to conduct the searches for the responsive records between the clerk's department and the information technology division. I reiterate the town's point that if there are records that the appellant now does not seek access to, she may inform the town. Specifically, if the appellant does not seek access to the proposals submitted by the vendors in response to the request for proposals, she should let the town know as soon as possible and the fee estimate can be adjusted accordingly.

[39] Regarding the other issues raised by the appellant about the town's search for responsive records, I accept the town's reasonable expectations as to the steps required and the searches necessary given the breadth of the period of time set out in the request.

[40] I do not address the appellant's argument that an internet search could have satisfied the town's search for records. The clerk has explained the steps necessary to locate the responsive information and I accept this explanation.

[41] I further accept the town's amended estimated fee for preparation of the records of \$232.50 for 7.75 hours.

[42] The town has estimated that it will need time to sever the records for disclosure as well as time to conduct searches in its computer systems using its accounting software and consolidate that information into a new record. The town is permitted to charge \$7.50 for each 15 minutes to sever the records with the IPC accepting that it takes two

minutes to sever a page that may require multiple severances. I further accept that the queries to the accounting software to prepare a report also constitutes preparing a record for disclosure under section 45(1)(b) of the *Act*.

[43] Accordingly, I uphold the town's fee estimate of \$892.50.

**Issue B: Should the fee be waived?**

[44] Section 45(4) of the *Act* requires the town to waive fees, in whole or in part, in certain circumstances. Section 8 of Regulation 823 sets out additional matters for a head to consider in deciding whether to waive a fee.

[45] Section 45(4) states:

A head shall waive the payment of all or any part of an amount required to be paid under subsection (1) if, in the head's opinion, it is fair and equitable to do so after considering,

- (a) the extent to which the actual cost of processing, collecting and copying the record varies from the amount of the payment required by subsection (1);
- (b) whether the payment will cause financial hardship for the person requesting the record;
- (c) whether dissemination of the record will benefit public health or safety; and
- (d) any other matters prescribed by the regulations.

[46] Section 8 of Regulation 823 states:

The following are prescribed as matters for a head to consider in deciding whether to waive all or part of a payment required to be made under the *Act*:

1. Whether the person requesting access to the record is given access to it.
2. If the amount of a payment would be \$5 or less, whether the amount of the payment is too small to justify requiring payment.

[47] The fee provisions in the *Act* establish a user-pay principle which is founded on the premise that requester pay the prescribed fees associated with processing a request unless it is fair and equitable that they not do so. The fees referred to in section 45(1) and outlined in section 8 of Regulation 823 are mandatory unless the requester can present a persuasive argument that a fee waiver is justified on the basis that it is fair and

equitable to grant it or the *Act* requires the institution to waive the fees.<sup>1</sup>

### ***Representations***

[48] The appellant submits that she should be granted a fee waiver on the basis that dissemination of the records will benefit public health and safety.

[49] The appellant states that the town is designated under the Provincial Nuclear Emergency Response Plan due to its proximity to Michigan's Fermi 2 Nuclear Generating Station. The appellant submits that there are approximately 5000 town residents with disabilities that have a right to access information about their health and safety. These same residents also have a right to scrutinize compliance with accessibility legislation that would ensure their access to pertinent information in the event of a disaster. Thus, the appellant submits that they have a right to know if the town is fulfilling its accessibility obligations.

[50] The appellant notes that the former town clerk publicly disclosed at the September 14, 2020, council meeting that the town website was not compliant with the *AODA* due to third party vendors, in part, and specifically mentioned those responsible for the fire and tourism department websites.

[51] The appellant notes that she wrote an 8-part series regarding the town's website noncompliance. As an accessibility advocate, the appellant has spent the past 20 years asking the town to ensure its website is accessible, but the website still has accessibility issues. The appellant argues that if the town disclosed information regarding the third-party vendors, she would disseminate it on her blog.

[52] The appellant submits that it would not be fair and equitable in the circumstances to not grant a fee waiver because of the town's misinterpretation of the request and two clarifications. The appellant further submits that the town should have granted a fee waiver based on its desire to increase accountability, transparency and to accept information requests for information or seek further clarification.

[53] The town submits that it was not until mediation that the appellant submitted a fee waiver request and further the appellant did not state how her fee waiver request met the requirements of section 45(4) for a fee waiver. Accordingly, it denied the fee waiver request.

[54] The town asked that I consider that it responded promptly to the appellant's request and tried to work with the appellant to reach an amicable resolution.

[55] The town notes that it sought clarification from the appellant to reduce the scope of the request and to seek clarity on what information was being sought so that the work

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<sup>1</sup> Order PO-2726.

could be targeted to limit any financial impact posed by the fee.

[56] Regarding whether the town provided any records to the appellant free of charge, the town states the following:

- The town determined that the possible fees for the request would be \$1327.50
- The town waived fees for the request before sending the estimate to \$967.50
- Through the mediation process the town further waived the fees to \$892.50

[57] The town notes that the request involves a review of thousands of pages of content, and the severing of records.

[58] Finally, the town submits that it is already shouldering the expense of multiple appeals, which have no cost recovery. The town has already provided the appellant with a fee waiver and an additional fee waiver in whole or in part would shift an unreasonable burden of the cost from the appellant to the town.

### ***Finding***

[59] Based on the circumstances of this appeal, I find that granting an additional fee waiver would not be "fair and equitable" in the circumstances.

[60] The appellant has claimed the ground under section 45(4)(c) for a fee waiver: that dissemination of the records will benefit public health or safety.

[61] I accept that the subject matter of the appellant's request and the responsive records, third party vendors that provide website services to the town, is a matter of public rather than private interest.

[62] I accept that there is a slight public health and safety issue in the records if these third-party vendors are impacting the town's ability to meet its obligations under the *AODA* regarding its website. However, I do not accept that disseminating the records would yield a public benefit. In my view, these records would not disclose a public health or safety concern and would not meaningfully contribute to the development of understanding of the town's accessibility obligations regarding its website.

[63] While I accept that the town's lack of compliance with the *AODA* regarding its website is a public interest issue, in my view, it is not a public health or safety issue.

[64] Based on the circumstances in this appeal, I do not accept that dissemination of the responsive records would benefit public health or safety and would not grant a fee waiver on the basis of section 45(4)(c).

[65] Finally, I have considered any other reasons to grant the appellant a fee waiver. In the circumstances, I find that there are none. I uphold the town's decision to deny a

further fee waiver.

**Issue C: Is the town's 30-day time extension for responding to the appellant's access request in compliance with section 20(1) of the Act?**

[66] The appellant objects to the town's decision to extend the time for responding to the access request by 30 days.

[67] Section 20(1) of the *Act* sets out the requirements for issuing a time extension for responding to an access request. It states:

A head may extend the time limit set out in section 19 for a period of time that is reasonable in the circumstances, if,

(a) the request is for a large number of records that necessitates a search through a large number of records and meeting the time limit would unreasonably interfere with the operations of the institution; or

(b) consultations with a person outside the institution are necessary to comply with the request and cannot reasonably be completed within the time limit.

[68] The town submits that it gave notice to the appellant of the need for a time extension given that it was dealing with an ongoing emergency declaration relative to the global pandemic. The town noted that responding to the request would necessitate the full-time equivalent of 29.75 hours of work before the town ever reached gave out notice to third parties or contemplated potential exemptions.

[69] The town states that where a request constitutes a scope of work that goes well beyond that which is normally possible within the 30 day legislated time frame to respond, additional resources must be redirected from other responsibilities and additional constraints on staff time are not taken into account except through the use of an extension request.

[70] The town further states it will be required to consult with third parties.

[71] The appellant submits that the records she requested, and any identified responsive records should not constitute a large number of documents. The search should be limited to one person in the clerk's department and disputes the town's position that searching would require 29.75 hours of work.

[72] Both the appellant and the town address the town's work to bring its website into compliance with the AODA. I will not be addressing these submissions, nor do I find them relevant to my determination of this issue.

**Analysis**

[73] I uphold the town’s time extension of 30 days if the appellant continues to seek access to the information and responsive records described in her request set out above. During the inquiry, the appellant noted that she was not seeking the submissions made by third parties and the information being searched for by the information and technology division.

[74] The determination of whether a time extension is reasonable requires the consideration of the following factors which may include:

- The number of records requested.
- The number of records the institution must search through to locate the requested records
- Whether meeting the time limit would unreasonably interfere with the operations of the institution.<sup>2</sup>

[75] As stated above, I accept the time needed to search and prepare the records. I find that given the appellant’s request and the number of the records to be searched to locate the responsive information, the town’s town extension is reasonable.

[76] Accordingly, I uphold the town’s time extension of 30 days so long as the appellant continues to seek all of the information set out in her request.

[77] The town submits that it will have to consult with third parties once it has completed its search. I wish to confirm that the third-party consultations referred to in section 20(1)(b) do not refer to the third-party notices that an institution is required to give to affected parties under section 21 of the *Act*.

**ORDER:**

1. I uphold the town’s revised fee estimate of \$892.50.
2. I uphold the town’s decision to deny a fee waiver.
3. I uphold the town’s time extension of 30 days.

Original Signed by: \_\_\_\_\_  
Stephanie Haly  
Adjudicator

\_\_\_\_\_ December 30, 2024

<sup>2</sup> Order PO-2950.