

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4675

Appeal MA23-00881

The Corporation of the Town of Essex

July 4, 2025

Summary: An individual made a request to the Corporation of the Town of Essex (the town) under the *Municipal Freedom of Information and Protection of Privacy Act* for access to records relating to three specified properties. The town issued a decision granting full access to the responsive records on payment of a fee. After considering the appellant's fee waiver request, the town waived part of the fee but would not grant a full waiver.

In this order, the adjudicator upholds the town's decision not to provide a further fee waiver.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, section 45(4); Regulation 823, section 8.

OVERVIEW:

[1] The Corporation of the Town of Essex (the town) received a request, under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), for the following:

Copies of Building Permits for three specified properties, including a Septic permit. Application to rezone all properties. The reason for Building Department imposed New Restrictions.

[2] After a time extension, the town issued an access decision, granting full access to responsive records upon payment of a fee of \$239.90.

[3] Dissatisfied with the town's decision, the requester (now the appellant) appealed it to the Information and Privacy Commissioner of Ontario (IPC). A mediator was assigned to explore the possibility of resolution.

[4] During mediation, the appellant clarified that he was only appealing the \$239.90 fee. He requested and received a fee waiver, which reduced the fee to \$137.50.

[5] The appellant paid the reduced fee and reviewed the responsive records. The appellant subsequently advised that he was not satisfied with the disclosure, objecting to the absence of certain rezoning records. The appellant also objected to the town charging any fee for access to the records, requesting that the town grant a full fee waiver.

[6] As a mediated resolution was not reached, the appeal was transferred to the adjudication stage, where an adjudicator may conduct an inquiry under the *Act*. I commenced an inquiry in which I sought and received representations from the parties about the issues in the appeal.¹

[7] For the following reasons, I uphold the town's decision to not provide a further fee waiver.

DISCUSSION:

[8] The sole issue in this appeal is whether the town should waive its fee of \$239.90, in full.

[9] The fee provisions in the *Act* establish a "user-pay" principle. The fees referred to in section 45(1) and outlined in section 8 of Regulation 823 are mandatory unless the requester can show that they should be waived.²

[10] The *Act* requires an institution to waive fees, in whole or in part, if it is fair and equitable to do so. Section 45(4) of the *Act* and section 8 of Regulation 823 set out matters the institution must consider in deciding whether to waive a fee. Those provisions state:

45. (4) 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);

¹ The parties' representations were shared in accordance with the confidentiality criteria in the IPC's *Practice Direction Number 7*.

² Order PO-2726.

(b) whether the payment will cause a financial hardship for the person requesting the record;

(c) whether dissemination of the record will benefit public health or safety; and

(d) any other matter prescribed by the regulations.

8. 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.

Other relevant factors

[11] A fee must be waived, in whole or in part, if it would be “fair and equitable” to do so in the circumstances.³ An institution must consider any relevant factors when deciding whether it would be fair and equitable to waive the fee. Relevant factors may include:

- the manner in which the institution responded to the request
- whether the institution worked constructively with the requester to narrow the scope of the request
- whether the requester worked constructively with the institution to narrow the scope of the request
- whether the request involves a large number of records
- whether the requester has offered a compromise that would reduce costs
- whether the institution has provided any records to the requester free of charge, and
- whether the waiver of the fee would shift an unreasonable burden of the cost from the requester to the institution.⁴

³ See *Mann v. Ontario (Ministry of Environment)*, 2017 ONSC 1056.

⁴ Orders M-166, M-408 and PO-1953-F.

Representations

[12] In its representations, the town submits that it would not be fair and equitable in the circumstances of this request to waive the entire fee. It explains that between 2015 and 2023, the appellant made 31 requests,⁵ all of which related to properties within a specified area. The town explains that it waived the entire fee for 11 of the appellant's requests, which resulted in a total fee waiver of \$794.20. As such, the town submits that, due to the large number of requests and the abundance of previous fee waivers provided, it is not fair and equitable to provide a full free waiver in this appeal.

[13] Moreover, the town submits that it reduced the fee by 57% in the current appeal. It submits that the reduced fee is a substantial reduction to the actual cost of processing, collecting and copying the records provided.

[14] Finally, the town submits that it is not aware that paying the reduced fee will cause a financial hardship for the appellant. It submits that the appellant is not arguing that dissemination of the records will benefit public health or safety.

[15] In his representations, the appellant states that he is dissatisfied with the disclosed records. He explains that the disclosed records did not include the rezoning application and it did not include any record(s) explaining the reason for the building department imposed new restrictions. In sum, the appellant submits that he did not receive what he requested from the town.⁶

[16] The town and the appellant provided reply and sur-reply representations, respectively, but these representations did not address the issue of fee waiver.

Analysis and findings

[17] For a fee waiver to be granted under section 45(4), the test is whether any waiver would be "fair and equitable" in the circumstances.⁷ Factors that must be considered in deciding whether it would be fair and equitable to waive the fees include:

- whether the actual cost varies from the amount of the fee, and if so, to what extent;⁸
- financial hardship of the appellant;⁹
- public health or safety;¹⁰ and

⁵ After receiving the fee estimates, the appellant abandoned three of his 31 requests.

⁶ I note that the appellant does not specifically address the issue of fee waiver in his representations.

⁷ See *Mann v. Ontario (Ministry of the Environment)*, 2017 ONSC 1056.

⁸ Section 45(4)(a) of the *Act*.

⁹ Section 45(4)(b) of the *Act*.

¹⁰ Section 45(4)(c) of the *Act*.

- other relevant factors as prescribed by the regulation.

[18] I note that the appellant's representations do not rely on any of the above listed factors while the town's representations address, albeit briefly, the first factor.

[19] I will consider these factors below.

Actual cost in comparison to the fee: section 45(4)(a)

[20] The town submits that the reduced fee is a substantial reduction to the actual cost of processing, collecting and copying the records provided for the request.

[21] I note that the appellant does not agree nor disagree with the town's statement. Instead, he takes the position that he should not have to pay for the records that were disclosed to him by the town. In particular, the appellant is unhappy that the disclosed records (which he received on payment of the fee) did not include the rezoning application and did not include any record(s) explaining the reason(s) for the building department imposed new restrictions.

[22] As a result of the fee waiver granted by the town, the appellant paid a reduced fee that amounted to 43% of the actual fee, I agree with the town that the reduced fee is a substantial reduction to the actual cost of processing, collecting and copying the records. As the actual cost to the town to process the appellant's request is much greater than the reduced fee, I find that this factor is relevant to this appeal and weighs against granting a further fee waiver.

Other listed factors

[23] The other listed factors are the payment will cause a financial hardship for the person requesting the records (section 45(4)(b)) and dissemination of the records will benefit public health or safety (section 45(4)(c)).

[24] For section 45(4)(b) to apply, the appellant must provide evidence regarding his financial situation, including information about his income, expenses, assets and liabilities.¹¹ I note that the appellant did not provide any evidence regarding his financial situation either to the town or to the IPC. Accordingly, I do not find that this factor is relevant to this appeal and I do not give it any weight.

[25] The focus of section 45(4)(c) is "public health or safety". It is not enough to show that there is a "public interest" in the records – the public interest must relate to gaining information about a public health and safety issue.¹² I note that the appellant did not provide any representations on the possible application of this factor in the context of this appeal. As such, I do not find that this factor is relevant to this appeal and do not

¹¹ Orders M--914, P-591, P-700, P-1142, P-1365 and P-1393.

¹² Orders MO-1336, MO-2071, PO-2592 and PO-2726.

give it any weight.

Non-listed factors

[26] As previously noted, I am required to consider the factors listed in the *Act* and the regulation, as well as any other relevant factors.¹³

[27] The town submits that it provided some records to the appellant free of charge. I note from the town's reply representations that it provided the appellant 10 records free of charge. I find that this is a relevant factor that weighs against a further fee waiver.

[28] At mediation, the appellant narrowed his request to only part 8 of record 10. Accordingly, he was only charged for part 8 of this record. I find this is a relevant factor that weighs for a further fee waiver.

[29] It does not appear that the request involves a large number of records. I find that this is a relevant factor that weighs for a further fee waiver.

[30] Finally, I also consider as a relevant factor whether a further fee waiver would shift an unreasonable burden of the cost from the appellant to the town. The town has already waived a substantial portion of the fee. Given the actual cost of processing the request and considering the user-pay principle that is established in the *Act*, I find that it would be unreasonable to order a further fee waiver because it would shift an unreasonable burden of the cost from the appellant to the town.

Conclusion

[31] I find that the following factors weigh against a further fee waiver:

- the actual cost of the request to the town is substantially greater than the fee that the town ultimately charged the appellant after granting a partial waiver; and
- further waiver of the fees would shift an unreasonable burden of the cost from the appellant to the town.

[32] I find that the following factor weighs in favor of a further fee waiver:

- the request does not involve a large number of records (19 records); and
- the appellant worked constructively to narrow down one record.

[33] Considering all of the relevant factors, and in light of the user-pay principle articulated above, I find that on balance, it would not be fair and equitable to grant a further fee waiver. Accordingly, I uphold the town's decision to grant a 57% waiver of the original fee, reducing the fee to \$137.50. I will not order the town to grant a further

¹³ Orders M-166, M-408 and PO-1953-F.

fee waiver.

ORDER:

I uphold the town's decision to deny a full fee waiver for this appeal.

Original Signed by _____
Lan An
Adjudicator

July 4, 2025 _____