Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER MO-1614

Appeal MA-020032-2

City of Toronto

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NATURE OF THE APPEAL:

The City of Toronto (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the following information relating to animal care services:

1. which Toronto pounds send animals upon requisition to research facilities (we require all specifics including but not necessarily limited to dates, age, sex, breed and eventual use and disposition of animals by research facilities)

2. what are the guidelines for expenditures on veterinary care for sick and/or injured stray animals (we require all specifics including but not necessarily limited to dates, age, sex breed, extent of injury, treatment and eventual disposition of animals) and what happens when the cost of any animal's veterinary treatment exceeds these guidelines

3. what are the criteria used to assess which animals are placed up for adoption, and how long they are placed up for adoption

4. at what location or locations are the animals given veterinary care and by whom

5. what is the means of euthanasia for companion animals and for wildlife respectively

6. where are the animals euthanised and by whom

7. we require a comprehensive budget with a line by line item breakdown

8. all correspondence of any description of the last 5 years (1996-date, inclusive) relating to the provision of animal control and care services in Metropolitan Toronto.

The requester also asked that any fees be waived or reduced, stating:

> [The organization represented by the requester] is a registered charitable organization and is making this request as part of its humane education program delivered to the Canadian public.
>
> In an effort to allocate more of our resources toward the charity's programs, we would respectfully ask your department to waive or reduce the fees associated with our request.

The same requester submitted a similar request to the Ministry of Agriculture, Rural Affairs and Food (the Ministry). The Ministry transferred the following portions of that request to the City:

1. copies of all correspondence relating to the provision of animal care, control and pound services in Metropolitan Toronto from 1996-2001

2. full information on which Metro Toronto pounds send animals to research facilities, and complete records of the number of animals requisitioned to be sent to research facilities from Metro Toronto pounds from 1996-2001. All specifics including but not necessarily limited to dates, age, sex, breed, the eventual use and disposition of pound animals, to which research facilities the animals were sent in each instance, the stated purpose of the research to be carried out and copies of the requisition forms.

The City combined the requests into one file.

The City sought clarification from the requester regarding the budget-related information. The requester responded that he was interested in the following:

> The information being requested includes, but is not necessarily limited to: costs such as individual salaries, benefits, animal food, veterinary supplied (e.g. vaccinations, antibiotics, bandages, euthanasia drugs), veterinary costs, vehicles (e.g. purchase, maintenance, insurance, fuel), income such a monies received from the sale of animals for research, fines, adoption of animals and so forth.

The City did not provide the requester with an access decision within the 30-day response standard established by the *Act*, and the requester (now the appellant) filed a "deemed refusal" appeal. That appeal was resolved when the City provided the appellant with a decision letter.

In its decision letter, the City:

- granted access to inspection reports

- advised the appellant that there were no records relating to which pounds sent animals to research facilities because no animals had been sent to research facilities from 1996 to 2001

- indicated that some responsive records may have been destroyed, due to different record retention schedules in the former municipalities that now make up the City

- provided a fee estimate of $90,000, based on 26 months of search time in relation to the balance of information requested. The City noted that, in addition to the $90,000, there would likely be photocopy and computer costs.

The only reference in the decision letter to a possible fee waiver is:

> The *Act* provides that all or part of the fee can be waived if, in our opinion, it is fair and equitable to do so, if the fee will cause the requester financial hardship or if dissemination of the records will benefit public health and safety.

The appellant appealed the City's decision. He took issue with the City's position that no animals had been sent to research facilities, the fee estimate and the City's proposed time extension. The appellant also objected to the City's response to his fee waiver request.

Mediation did not resolve the issues in the appeal, so it was transferred to the adjudication stage.

I sent a Notice of Inquiry to the City, initially, outlining the facts and issues and requesting written representations. The City submitted representation in response, the non-confidential portions of which were shared with the appellant, along with a copy of the Notice. The appellant also provided representations.

DISCUSSION:

IS THE CITY'S INTERIM DECISION ADEQUATE?

The City's decision letter provided the appellant with a fee estimate of $90,000. The City offered the following explanation regarding how this estimate was determined:

> With respect to the remaining items of your request, please be advised that there is no requirement under the *Act* for records to be created in response to a request. Animal Services has advised that it does not have the information in a summary form that would specifically answer your questions nor is this information located in any one central location. For most of the relevant data, it will be necessary to search Animal Services records, both electronic and hard copy, in five different regional offices as well as archives. For computer-stored information, scripts would need to be created and tested before the runs.
>
> All relevant information would then need to be compiled and records generated summarizing the information in the form you have requested.
>
> Animal Services has estimated that a search of over approximately 120,000 hard copy records and an unknown number of electronic documents for the relevant data will be required. Animal Services has advised that this would translate to one full time staff member taking approximately 26 months to complete the search and compile the relevant information.
>
> Based on the information provided by Animal Services, a fee estimate for search time is as follows:
>
> Approximately 3000 hours @ $30.00 = $90,000
>
> Please note this is an estimate for search time only. There will likely be additional computer costs to generate the records as well as photocopying fees for copies of any records requested.

The City then asked the appellant provide a deposit of $45,000 before it would proceed further with the required searches.

In response, the appellant advised the City:

> For an agency that doesn't know where all the records are, doesn't know which records they have, doesn't know exactly what form they are in, Toronto Animal Services has certainly been able to come up with a pretty specific price tag of $90,000 and 26 months. This response is the most blatant and transparent attempt we have ever witnessed by any group of civil servants and politicians to obstruct the release of public information. Once more, we repeat, that in order to expedite our request and save everyone time and money, we have offered to attend at their offices, and based upon our own extensive experiences sort through the records manually. Rest assured, we can perform this task much more cheaply than at a rate of $30 per hour.

It is clear that the City has made in interim access decision, including a fee estimate. The issue for me to determine is whether this decision complies with the requirements of the *Act* as interpreted by various orders of this office.

In Order MO-1479, in the context of a decision by the Hamilton Police Service in response to a request for voluminous records, Adjudicator Sherry Liang explained the requirements of an interim decision:

> It is apparent from the decision of the Police that no final decision on access to the records has been made. The Police have referred to the difficulty in responding to this request created by the large number of records. In view of this, the procedures outlined in Order 81 for interim decisions are applicable to this situation. In that order Commissioner Linden set out the procedures to be followed . . . These procedures contemplate the institution reviewing a representative sample of records, or seeking the advice of knowledgeable staff within the institution who are familiar with the type and content of the records, in order to produce an interim notice containing a fee estimate and an indication of what exemptions might apply. In this regard, dealing with the provincial *Act*, former Commissioner Linden stated:
>
> > What should the head do in these situations? In my view, the *Act* allows the head to provide the requester with a fees estimate pursuant to subsection 57(2) [the provincial equivalent of section 45(3)] of the *Act*. This estimate should be accompanied by an "interim" notice pursuant to section 26 [the provincial equivalent of section 19]. This "interim" notice should give the requester an indication of whether he or she is likely to be given access to the requested records, together with a reasonable estimate of any proposed fees. In my view, a requester must be provided with sufficient information to make an informed decision regarding payment of fees, and it is the responsibility of the head to take whatever steps are necessary to ensure that the fees estimate is based on a reasonable understanding of the costs involved in

> providing access. Anything less, in my view, would compromise and undermine the underlying principles of the *Act*.
>
> How can a head be satisfied that the fees estimate is reasonable without actually inspecting all of the requested records? Familiarity with the scope of the request can be achieved in either of two ways: (1) the head can seek the advice of an employee of the institution who is familiar with the type and contents of the requested records; or (2) the head can base the estimate on a representative (as opposed to a random) sample of the records . . .
>
> The head's notice to the requester should not only include a breakdown of the estimated fees, but also a clear statement as to how the estimate was calculated (i.e. on the basis of either consultations or a representative sample.) While I would encourage institutions to provide requesters with as much information as possible regarding exemptions which are being contemplated, the head must make a clear statement in the notice that a final decision respecting access has not been made. Because the head has not yet seen all of the requested records, any final decision on access would be premature, and can only properly be made once all of the records are retrieved and reviewed. However, in my view, if no indication is made at the time a fees estimate is presented that access to the record may not be granted, it is reasonable for a requester to infer that the records will be released in their entirety upon payment of the required fees.

> . . . Applying the principles in Order 81, I find that the decision letter of the Police was inadequate in achieving the goal of providing the appellant with sufficient information to make an informed decision regarding the payment of fees. Read on its own, the decision does not, for instance, state what the charge for "preparation time" involves. It is only from the representations of the Police that it now becomes apparent that severances will be made to the records. Further, it is not clear from the decision how much of the material located in response to the request will be disclosed. It is not clear whether the result of severance will be that only a small amount of information will be disclosed, or most of the information located. Again, it is only through the representations that the appellant is told that the "majority" of the information in the records will be disclosed.

The City's interim decision in this case is not adequate in the circumstances. It appears that in contacting its Animal Services department, the City chose the option of seeking the advice of an employee familiar with the type and contents of the records. In its decision letter, the City states that "Animal Services has estimated that a search of over approximately 120,000 hard copy records and an unknown number of electronic documents for the relevant data will be required". However, there is nothing to indicate how this figure was arrived at, or how this volume of

records "would translate to one full time staff member taking approximately 26 months to complete the search and compile the relevant records".

In my view, an estimate of this magnitude cannot be justified on the basis of this little detail or substantiation. It was, or should have been, clear to the City that a fee estimate of $90,000 would be daunting to any requester, and particularly so in this case where the appellant had specifically pointed to its status as a registered charity seeking a fee waiver. At a minimum, I would expect the City to have either entered into detailed discussions with the appellant in an effort to clarify and narrow the scope of the request, or to provide a detailed and comprehensive outline of how the required search activities for the various components of the request were calculated. Although I am not suggesting that the City intended its fee estimate to act as a deterrent to the appellant in proceeding with his request, in my view, that outcome could certainly have occurred.

In addition, the City's decision letter does not indicate whether or not it intended to provide the appellant with access to all responsive records and, if not, which exemptions may apply. Although the decision letter itself might imply that no exemption claims were applicable, in its representations submitted during the course of this appeal, the City identifies possible severing costs, which would indicate an intention to claim some exemptions. As stated earlier, a proper interim access decision must accompany the fee estimate. Without a proper interim access decision, the appellant did not know if he was going to be granted access to the records if he paid the fee estimate.

In summation, the City's interim decision is inadequate because it does not: (i) provide sufficient detail to substantiate the magnitude of the fee estimate; (ii) identify possible exemptions that may apply; and (iii) indicate the extent to which access is likely to be granted.

WHAT IS THE APPROPRIATE REMEDY?

Introduction

Adjudicators have taken different approaches in appeals involving inadequate interim decisions.

In Order MO-1479, Adjudicator Liang found that the institution's decision letter was inadequate, but that the appellant had been given sufficient information, through a combination of the decision letter and representations shared during the inquiry process, to make an informed decision about paying the fee. Accordingly, she did not order the institution to provide a new interim decision letter, and proceeded to deal with the appeal on the basis of the issues identified in her Notice of Inquiry.

In Order MO-1367, Adjudicator Laurel Cropley found that the institution had gone part way in its interim decision obligations by performing a sample computer search, but had not taken the next step of performing a sample manual review of the computer-generated records in order to provide the appellant with an idea of how many responsive records existed. Adjudicator Cropley ordered the institution to provide the appellant with a revised interim decision and fee estimate.

In Order MO-1336, Adjudicator Cropley found that the institution had not provided a proper interim access decision, nor was the fee estimate adequate for the purposes of advising the appellant. Although during the inquiry process the institution confirmed that it would provide the appellant full access, because the institution's original fee estimate did not deal with preparation charges or photocopying costs, Adjudicator Cropley found that these fees could not be claimed at the inquiry stage, and ordered the institution to disclose the records free of charge.

In Order M-1123, I dealt with a situation where the institution responded to a request by providing some records, and issuing a fee estimate to cover other possible responsive records not yet identified. However, the institution did not provide an interim access decision to accompany the fee estimate:

> By not complying with Order 81, none of the benefits of the process identified in that order are present in this case. The Board does not have the benefit of a representative sample of records or the expertise of a knowledgeable employee in calculating a fee estimate, and has not provided the appellant with any indication as to whether these records will be disclosed. The appellant does not have the benefit of an interim access decision. Finally, the Commissioner's office has not been provided with the type of information required in order to assess the reasonableness of the fee estimate. Although the Board has provided information relating to the amount of search activity required in order to identify responsive information, it has provided no description as to the steps required to accomplish the various tasks involved in identifying, searching and retrieving the responsive records, nor has it provided an explanation of the way in which the information is stored. Although the Board is entitled to charge for preparation time, which normally relates to severance activity, without a proper interim access decision I cannot determine whether these charges are incorporated into the fee estimate. Further, the Board indicates that it is prepared to create a new record to respond to the request, but it is not clear whether charges for this activity are included in the fee estimate.

I disallowed the fee and ordered the institution to issue a final access decision to the appellant.

In Order MO-1294, Adjudicator Holly Big Canoe also disallowed the institution's fee estimate. Adjudicator Big Canoe found:

> Other than indicating during mediation that the tender documents are kept "in a back storage room", the Township has not provided representations in support of its search charges.
>
> The appellant is of the view that the Township should have identified which records did require retrieval time, set the fees at that point, given her an estimate of the costs involved, and given her the opportunity to decide the next step (to continue the retrieval, appeal the decision, refine the request or abandon the exercise) before proceeding with her request. Although this issue was characterized by the mediator as "whether the Township has the obligation to clarify the request with the requester before proceeding" in the mediator's report,

> in my view it is more appropriately categorized as whether the Township complied with the interim notice procedures discussed in Order 81.
>
> …
>
> In this appeal, the Township acknowledges that it could have shortened the required search time by referring the appellant to the Council minutes to identify where the records she was requesting appeared. Additionally, the Township did not provide the appellant or this office with a detailed breakdown of the fee estimate, did not comply with the interim notice requirements, and did not provide representations which explained what other activities, if any, were necessary to locate the records. In the circumstances, I do not uphold the Township's search charges.

The different approaches followed in these cases make it clear that the appropriate remedy is dependent on the facts and circumstances of a particular appeal.

As far as the present appeal is concerned, the City did not provide the appellant with a proper interim access decision.

As far as the fee estimate is concerned, the City's justification for its search fees in its initial decision letter to the appellant was inadequate. However, applying Adjudicator Liang's approach from Order MO-1497, in my view, it is also relevant for me to consider the extent to which additional details provided to the appellant during the subsequent appeal remedied this deficiency.

City's Representations

In its representations provided in response to the Notice of Inquiry, which I shared with the appellant, the City provides extensive submissions on the fee issue. It submits:

> … in arriving at a fee estimate of $90,000, i.e., 3000 hours of search time at $30 an hour, the City considered the following information:
>
> - There are 5 TAS [Toronto Animal Services] District Offices, loosely representing the former municipalities. Up until 2000, each district office had its own computer system with different information relating to animal services being maintained in its databases, as well as separate hardcopy file systems.
>
> - When the new animal management computer system, Chameleon, was purchased in 2001, each district office was able to then transfer information from its own databases into central databases. The new system which is now up and running allows TAS to maintain records relating to animal licensing and registration, to track lost animals, to monitor field services calls and to arrange for animal adoptions city-wide.

- However, the districts continue to have some separate electronic records as well as all hard copy documents. It is possible that some continue to have hard copy documents of information that is now being recorded electronically by other districts.

- For a period of time, not all staff were fully trained in the new system, resulting in inconsistencies and inaccuracies in the information being inputted into the central databases. In addition, some of the terminology did not mean the same for everyone, for example, some field officers recorded "euthanized" for all dead animals. It is also not entirely clear that present staff have the technical expertise (or the time) to do the work necessarily to search and compile the requested information such as writing scripts (see below). The services of the systems developer or an outside consultant may have to be engaged.

- Some animal control records are not found with TAS, for example, dog bites and rabies records are located in the Communicable Diseases Division and not the Health Environments Division of Toronto Public Health.

- For the former City of East York, animal complaints were not separated from any other type of complaints such as sanitation, roads and traffic ones, but were filed by date. These records are likely now located in other City departments such Urban Development Services.

- The City may not have complete animal control and protection records for the former City of Toronto, i.e., some animal sheltering records may reside with the THS.

- Not all hard copy files are readily accessible in the animal centres i.e. many inactive and archival records have been shipped to City archives by the districts. It is not clear if and how they were indexed before they were shipped. They will have to be retrieved from archives.

- As a consequences of above, a multitude of tasks would be required to locate and compile parts 3 to 6 of the appellant's request including but not limited to the following: reviewing both the central Chameleon and all individual district office databases, as well as all hard copy records to ascertain if any information requested by the appellant is available either electronically or in hard copy; cross referencing to ensure that there are no duplications of information being maintained in the databases and hard copy files; ascertaining that the information that has been

entered into Chameleon system is consistent and accurate, and that the information entered means the same for all staff; determining if any responsive records/information exist elsewhere, for example, a search of the files of other City departments may be required, consultations with THS, etc.; determining if any records have been destroyed in accordance with previous retention schedules; writing scripts to generate SQL or crystal reports to extract the data if available electronically—this may mean that the relevant information contained in hard copies will need to be inputted first, or if this is not practicable or possible, hard copy records will need to be manually reviewed and the relevant information calculated separately; and a final compilation of the responsive information provided in the summary report form requested by the appellant either electronically or in hard copy form or both.

In providing an estimate of the number of records involved, as well as the time to locate responsive information for parts 3 to 6 of the request, the City also considered the following factors:

- It is estimated that there are approximately 5,000 general "vet" hard copy records in addition to about 25,000 vet "bills" to be reviewed for the information being requested.

- The City deals with a number of vet clinics and hospitals. The vet bills, if available, are invoiced by animal number and are clinic-related, i.e., the vet is not always identified. All invoices would have to be reviewed and contact with the relevant clinic/hospital may be required in order to get the name of the vet who provided the service.

- The City also gives out 3 certificates for vet services when an animal is adopted from one of the City's animal shelters. These certificates can be used anywhere in the province. Some 30,000 to 40,000 certificates a year are issued. These certificates can be returned to TAS in two ways. People can return them together with the vets' invoices to be refunded by the City. Vets can directly discount their bills and when they have a number of certificates, return them together with the relevant documentation to the City to be refunded. A review of all of the returned certificates and documentation would need to made in order to provide some of the details requested by the appellant. However, the City does not always get these certificates returned and therefore, to ascertain who, where and what services were provided would not be possible in all cases, unless follow-up contacts to obtain this information were made directly with the individuals who adopted the animals.

- With respect to specifics relating to dates, age, sex, breed, treatment, and eventual disposition of companion animals, there are some general "guidelines" but very often, the action taken is determined on a case-by-case basis by the officer involved. To obtain the details requested, a review of approximately 80,000 hard copy records, including dispatch logs, and an unknown number of electronic records (probably in the hundreds of thousands) would be required. Similarly, a large number of additional records for information on the euthanization of wildlife animals (about 15,000 records a year are generated) would need to be reviewed. The problems with respect to terminology (i.e. euthanized vs. dead) would mean a further check with the individual officers may be needed to confirm the accuracy of the information.

- There are adoption guidelines but these relate to the "applicant screening" process only and there are no set limits on how long animals are put up for adoption. To obtain details of the basis upon which an animal was placed for adoption and for how long each animal was put up for adoption before it was adopted would require a review of the approximately 80,000 records referred to above.

- With respect to the budget information requested, the budgets of the districts do not contain the details requested. For example, "revenue" collected by the six animal centres is not broken down by every possible source. The TAS would need to review a large number of relevant records to locate and compile the specific information, for example to calculate monies from animal adoptions would require the review of approximately 9000 daily sheets. Information about individual employees' salaries and benefits may require a review of employee files (there are 85 employees). Information regarding vehicles would require a view of the invoices for the vehicles assigned to TAS and then the amounts calculated.

- The budget information prepared by each district is not necessarily the same, for example, not every district calculates the amount of fines collected, or includes it as a separate budget item. Some information on charges and fines may also reside with the Legal Department.

- In order to prepare a line-by-line budget for all districts, the City's Finance Department would be required to do in-depth research. To compound the difficulties of the research, since amalgamation, 3 different systems have been used by Finance to prepare TAS budgets. Even if Finance were able to generate a line-by-line

budget in the categories responsive to the request, at least 70 hours of computer time would be required.

With respect to a search for records responsive to part 1 of the request transferred from the Ministry, the City considered the following factors:

- The appellant has requested all correspondence (of any description) relating to the provision of animal care, control and pound services for 1996 to 2001. The City has taken correspondence to encompass all letters, memos/notes, emails, faxes and notices.

- Any record created by TAS would relate to the provision of animal care, control and pound services. As indicated in Appendix A, the TAS provides extensive and varied services, for example, last year, TAS investigated about 2,000 dog bites and responded to more than 25,960 field service calls. As a result, the number of records created by TAS during the 5-year time period of the request would number in the hundreds of thousands.

- The records would include correspondence between TAS staff, with other departments, City Councillors, outside organizations and governments, members of the public, the Toronto police, schools etc. Copies of such correspondence, however, are not usually maintained separately from other documents in TAS files. All files created would need to be reviewed and the correspondence pulled and separated from other types of records.

- In addition, correspondence relating to TAS services may be found in other City departments, with THS, etc., (See above). They are also likely to be many duplicates, for example, animal complaints are found not only in complaint files but also in individual employee files. Crosschecking the files would be required.

- Searching for responsive emails raises the issues of retention and disposal as well as the problem of duplication in hard copies.

Given all of the above factors, it is estimated that a search for correspondence requested by the appellant will involve hundreds of thousands of records and hundreds and hundreds of hours of staff time.

Other factors/considerations:

The appellant has stated that the information he has requested should be easily assessable because it is being used by TAS staff. As indicated above, it will take much time to locate and compile information for the 5-year period. Moreover, this is not the type of information that staff would need on a daily basis to do their work.

…

> In summary, the City submits that this request is very broad, complex and detailed, one that requires extensive searches involving a very large volume of both hardcopy and electronic records. In such circumstances, the City is of the view that its fee estimate for searching for the responsive information for this request of $90,000 (3,000 hours at $30.00 per hour) is reasonable and should be upheld.

Findings

There is no question that the City has gone to a great deal of effort to explain why it would take considerable time and resources to locate records responsive to all parts of the appellant's request. However, despite these efforts and the extensive representations, I remain unable to properly assess the reasonableness of the City's fee estimate. For example, the City notes that extensive searches, checks, script writing and compilation would have to occur in order to respond to parts 3 to 6 of the request, but it does not set out in any detail what types of records would be located, the number of records to be located, nor how long this whole process would take. The City does not tell me which employees would be involved in the searches and what tasks they would have to do to complete the necessary searches, compilation and preparation.

In another instance, the City notes that in locating the responsive records for veterinary services it would have to review all of the returned certificates that it issues in a year (estimated at 30,000 to 40,000), and that because not all of the returns are sent to the City, staff would have to contact all individuals who adopted animals in that given year. However, the City does not provide any specific details about how long it would take to review the certificates for the necessary information, or an indication of how many certificates are not returned in a given year.

As far as part 1 of the transferred request is concerned, the City states that there would be hundreds of thousands of responsive records, and that searches for "correspondence" alone would require staff to review correspondence between TAS staff, with other departments, City Councillors, outside organizations and governments, members of the public, the Toronto Police Service and schools. The City also points out that these records are stored in a number of different locations. However, even though it is evident that a great deal of time would be required to complete this search activity, the City has not provided the type of detailed information required to translate this work into a specific defensible timeframe. A representative sampling of these records, an alternative option under the interim decision process, might have been useful in this regard, but the City chose not to pursue this approach, nor did it enter into discussions with the appellant with a view to determining whether the scope of part 1 of the transferred request could be more narrowly focused or defined.

From the City's representations I am left with the overall impression that the required searches for records would be a long and arduous process, but I am not persuaded, based on the representations provided by the City, that it would cost $90,000 in search fees. I also find that, unlike the situation in Order MO-1497, despite having the benefit of the City's representations, the appellant still does not have sufficient information to make an informed decision about paying the fee.

The appellant has now been waiting for an access decision since November 2001. The City has had two opportunities to provide him with an interim access decision - at the request stage, by applying the interim decision procedures, and again during the course of preparing representations for this appeal. It has not done so and, in my view, simply requiring a proper interim access decision and fee estimate at this late stage is not the appropriate remedy in the circumstances of this appeal.

I have decided to craft a remedy that will attempt to balance the rights and expectations of the appellant to a substantive decision under the *Act*, with the City's right to recover some of its costs for locating the large and varied records responsive to the appellant's request. Accordingly, I will include provisions in this order that will require the City to provide the appellant with three new decision letters, as follows:

1. A final access decision on all responsive records accessible through the Chameleon database, which, according to the City's representations has been operational throughout the amalgamated City since 2001.

2. A final decision letter for all other records responsive to all parts of the appellant's request that relate to the former City of Toronto and to the current amalgamated City.

3. A proper revised interim decision letter and fee estimate, in accordance with the interim decision requirements discussed above, for all other records responsive to all parts of the appellant's request that related to the other former cities that now comprise the amalgamated City, broken down by individual former city.

The City will not be permitted to charge search fees for locating records covered by the two final decision letters.

TIME EXTENSION

Section 20(1) provides that an institution may extend the time limit "that is reasonable in the circumstances" if,

> (a) the request is for a large number of records or 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.

Factors that might be considered in determining the reasonableness of the extension in the context of the provisions of section 20(1) 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;

- whether consultations outside the institution were necessary to comply with the request and if so, whether such consultations could not reasonably be completed within the time limit.

The City states that it would take 26 months to search for the responsive records. The City submits:

> … the request is for a large volume of records, the searches required are both complex and extensive, involving the review of hundreds of thousands of TAS records, both hard copy and electronic. The searches will extend beyond the TAS to other divisions or departments, and consultations with the THS will likely be required.

Based on the City's representations, I have no difficulty in concluding that the appellant's request represents a large number of records and that the various required searches would unreasonably interfere with the operations of the City if required to be undertaken within the normal 30-day response standard.

However, for the same reasons as outlined earlier regarding the City's fee estimate, I am not persuaded that a 26-month extension is reasonable in the circumstances, as required by section 20(1)(a) of the *Act*. As noted earlier, the appellant has been waiting since November 2001 for an access decision and, in my view, it would be unconscionable to expect him to wait more than two additional years before obtaining access to records that, at least for the most part, would appear not to be subject to exemption claims.

Again, I am put in the situation of having to craft a remedy that attempts to balance the rights of the appellant to a prompt decision with the needs of the City to ensure that responding to the request does not unreasonably interfere with its operations.

Building on my earlier findings regarding the final and proper revised interim access decisions, I will include a provision in this order, extending the time frame by 30 days from the date of this order for the first final decision letter, and by 60 days from the date of this order for the second final decision letter and the proper revised interim access decision.

FEE WAIVER

The appellant's request makes it clear that he is seeking a fee waiver, based on the charitable status of the organization he represents and it's apparent intention to disseminate the information he receives "as part of its humane education program delivered to the Canadian public".

Section 45(4) of the *Act* provides:

> 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 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 in the regulations.

As noted earlier, the City did not provide a response to the appellant's request for a fee waiver when it provided its decision on the fee estimate.

I included the fee waiver issue in the Notice of Inquiry sent to the City during the course of this appeal, and the City addressed it in its representations. In essence, the City takes the position that the appellant did not properly request a fee waiver because he did not respond to the City's decision letter providing him with an opportunity to do so. The City then goes on to set out its reasons for denying the appellant's fee waiver request.

I do not accept the City's position. The appellant makes it clear in his request letter that he is seeking a fee waiver and, in my view, this issue should have been dealt with in the context of the City's original interim decision, particularly in light of the size of the fee estimate.

As a result of this order, and the remedies I order below, the appellant has effectively been granted a fee waiver for the search fees for all records covered by the final access decisions (see order Provisions 3 and 4, below). However, preparation and photocopying fees may still apply to these records. In addition, search and other fees will form part of the interim decision to be issued by the City in accordance with order Provision 5.

In the circumstances, I have decided that it would be most appropriate for the City to issue proper fee waiver decisions in the context of the final and interim decisions required by this order. This requirement will be reflected in Provisions 3, 4, and 5, below.

FINAL NOTE

I understand from the City's representations that the parties have at least on one occasion communicated with a view to clarifying the scope of the request, and the appellant has indicated in his representations a willingness to assist in various search activities. I would encourage the

City and the appellant to continue their communications in order to expedite the processing of the appellant's request and to reduce the overall costs to the City.

ORDER:

1. I find that the City's decision letter to the appellant is not adequate.

2. I do not uphold the City's fee estimate or time extension.

3. I order the City to provide the appellant with a final access decision and fee waiver decision for all responsive records accessible through the Chameleon database, in accordance with the provisions of sections 19, 21 and 22 of the *Act*, by **March 21, 2003**, without recourse to a time extension and without charging any search fees.

4. I order the City to provide the appellant with a final access decision and fee waiver decision for all other records responsive to all parts of the appellant's request that relate to the former City of Toronto and to the current amalgamated City, in accordance with the provisions of sections 19, 21 and 22 of the *Act*, by **April 21, 2003**, without recourse to a time extension and without charging any search fees.

5. I order the City to provide the appellant with a proper revised interim decision and fee estimate, together with a fee waiver decision, for all other records responsive to all parts of the appellant's request that relate to the other former cities that now comprise the amalgamated City, broken down by individual former city, in accordance with the provisions of sections 19, 21 and 22 of the *Act*, by **April 21, 2003**, without recourse to a time extension.

6. I order the City to provide me with copies of the three decision letters referred to in Provisions 3, 4, and 5 of this order.

Original signed by: February 19, 2003
Tom Mitchinson
Assistant Commissioner