



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

ORDER P-366

Appeal P-911150

Ministry of the Environment



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ORDER

On October 1, 1992, the undersigned was appointed Inquiry Officer and received a delegation of the power and duty to conduct inquiries and make orders under the Freedom of Information and Protection of Privacy Act (the Act) and the Municipal Freedom of Information and Protection of Privacy Act.

The Ministry of the Environment (the Ministry) received a request under the Act for access to records related to the investigation of complaints against [a named paving and excavating company and a named individual].

The Ministry granted partial access to the responsive record, and informed the requester that a fee of \$37.50 was required to process the request. The requester sought waiver of this fee on the grounds that payment of the fee would cause him financial hardship, and that dissemination of the record would benefit public health.

The Ministry decided not to waive the fee. It is this decision that the requester has appealed.

Subsequent to the filing of the appeal, the appellant paid the fee and received access to the record; however, he indicated that he wished to continue with the appeal.

Mediation of the appeal was not successful and, accordingly, notice that an inquiry was being conducted to review the Ministry's decision was sent to the appellant and the Ministry. Written representations were received from the Ministry only.

The sole issue arising in this appeal is whether the Ministry's decision not to waive the fee was in accordance with section 57(4) of the Act.

Section 57(4) of the Act reads, in part:

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

...

- (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.

Section 8 of Regulation 516/90, made under the Act, reads:

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 the payment.

The appellant has not submitted any representations to me on this matter; however his initial letter of appeal and his correspondence with the Ministry indicate that he feels he should qualify for a fee waiver for the reasons that payment of the fee would cause him financial hardship, and dissemination of the record would benefit public health.

In its representations, the Ministry submits that it has received no evidence that the payment of \$37.50 would cause the appellant financial hardship. With regard to the appellant's claim that dissemination of the record will benefit public health, it stated that "... depositing debris such as concrete and small amounts of asphalt which are inert substances, will not place the public at risk of drinking contaminated water."

The Act is silent as to who bears the burden of proof in respect of section 57(4); however, it has been stated in a number of previous orders that this section requires the requester to provide adequate evidence to support a claim for a fee waiver [Orders 31, 95].

Beyond repeating the provisions of the Act that payment of the fee would cause him financial hardship, and dissemination of the record will benefit public health, the appellant has not provided any evidence to support his claim for a fee waiver, either to the institution or to this office.

I am satisfied that, in the circumstances of this appeal, the Ministry's decision not to waive the fee was in accordance with section 57(4) of the Act.

ORDER:

I uphold the Ministry's decision not to waive the fee.

Original signed by: _____
Asfaw Seife
Inquiry Officer

November 13, 1992