



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

## **ORDER P-438**

Appeals P-9200299 and P-9200300

Stadium Corporation of Ontario Limited



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# ORDER

The Stadium Corporation of Ontario Limited (SkyDome) received two requests under the Freedom of Information and Protection of Privacy Act (the Act) for access to: "Briefings prepared by Stadco for the Ontario Government and the new Treasurer since Oct/90, and any correspondence sent/received from the government relating to government policy or positions on the status of present financing or proposed refinancing arrangements relating to Skydome" (Appeal P-9200299); and "Current capital budget, status of loans, any refinancing efforts underway" (Appeal P-9200300). The requester asked for a fee waiver with respect to both requests.

SkyDome responded by providing the requester with the following fee estimates:

	Appeal P-9200299	Appeal P-9200300
Manual search to locate record in excess of 2 hours (\$7.50/15 minutes)	\$300.00	\$150.00
Costs of preparing record for disclosure (\$7.50/15 minutes)	\$300.00	\$ 60.00
Photocopy costs (20c/page)	\$ 25.00	\$ 10.00
Shipping costs	\$ 20.00	\$ 20.00

SkyDome did not make a substantive decision on access to the responsive records, but did ask the requester to pay a deposit equal to 50% of the estimated fees before the requests would be processed. SkyDome also did not address the issue of fee waiver in either decision.

The requester appealed SkyDome's decisions regarding search and preparation time. In the case of Appeal P-9200300, the requester stated that he had received similar records before without having to pay a fee. The requester did not appeal the issue of fee waiver.

Mediation was not possible, and notice that an inquiry was being conducted to review both decisions of SkyDome was sent to the appellant and SkyDome. Representations were received from SkyDome.

The sole issue arising in these appeals is whether the amount of the estimated fees in both appeals was calculated in accordance with section 57(1) of the Act.

Section 57(1) of the Act reads as follows:

Where no provision is made for a charge or fee under any other Act, a head shall require the person who makes a request for access to a record to pay,

- (a) a search charge for every hour of manual search required in excess of two hours 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; and
- (d) shipping costs.

SkyDome's representations on the issue of fees are restricted to the following statements:

The fee estimates in both these appeals represent only a portion of costs actually incurred and the fees are properly imposed under the Act and considered reasonable. The requester has not established a basis for a waiver of fees based on the considerations as set forth in the Regulations. It is noted that the requester engages in information gathering as a business venture for profit. Therefore, we respectfully submit that the fee should be upheld.

In my view, SkyDome has provided insufficient evidence to substantiate its fee estimate in either appeal. It has not justified the search costs, explained where the searches were conducted or how extensive they were, or indicated what factors were considered in determining the preparation charges. In fact, correspondence received from SkyDome during the course of processing these appeals appears to indicate that SkyDome has not yet even determined whether responsive records exist, which makes it difficult to understand how fees could even be estimated.

Therefore, I find that the amount of the estimated fee in both appeals does not comply with the requirements of section 57(1) of the Act, and SkyDome is precluded from charging any fee for searching and preparing the records in processing the appellant's two requests.

## **ORDER:**

1. I do not uphold SkyDome's decision to charge a fee for the search and preparation costs of processing the appellant's two requests. I order SkyDome to issue a written notice to the appellant as to whether or not access to the requested records in both appeals will be given, within fifteen days of the date of this order and without recourse to a time extension.

2. In order to verify compliance with this order, I order SkyDome to provide me with a copy of each decision letter sent to the appellant within 20 days of the date of this order. These notices should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: \_\_\_\_\_  
Tom Mitchinson  
Assistant Commissioner

\_\_\_\_\_ March 30, 1993