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

ORDER P-491

Appeal P-9300107

Management Board Secretariat

80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9195
TTY: 416-325-7539
http://www.ipc.on.ca

ORDER

BACKGROUND:

The Ministry of Government Services (now the Management Board Secretariat) (the Secretariat) received a request pursuant to the Freedom of Information and Protection of Privacy Act (the Act) for access to "a list of all job competitions advertised by the Ministry of Government Services beginning Jan. 1, 1991 to the present, inclusive." The Secretariat responded, pursuant to section 57(3) of the Act, by providing the requester with an estimate of the fee required to be paid under the Act to cover the cost of conducting the search for records responsive to the request.

The Secretariat's decision stated:

> Access cannot be granted to this record as it is not available in the format requested. In order to provide you with this record, it will have to be compiled from a large volume of files.
>
> Section 57 of the Act requires fees to be charged in order to pay for certain costs incurred by the Secretariat in processing requests. Details of the fee estimate required to process this request are:
>
> **Search Time:**
>
> $7.50 for every quarter hour of search time;
> Estimate of 23.25 hours @ $30.00 per hour minus
> two free hours of search time:
>
> **Total: $637.50**

The requester appealed the Secretariat's decision regarding the search time stating that "I have reasonable and probable grounds to believe that this request can be made with less than two (2) hours effort therefore the time estimate would not be reasonable."

Mediation of the appeal was not successful and notice that an inquiry was being conducted to review the decision of the Board was sent to the appellant and the Secretariat. Representations were received from the Secretariat only.

The Secretariat has confirmed that upon payment of the required fee, access to the entire record will be granted.

The sole issue in this appeal is whether the amount of the estimated fee was calculated in accordance with section 57(1) of the Act.

Section 57(1) of the Act reads:

> 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.

In reviewing the Secretariat's fee estimate, my responsibility under section 57(5) of the Act is to ensure that the amount estimated by the Secretariat is reasonable in the circumstances. In this regard, the burden of establishing the reasonableness of the estimate rests with the Secretariat. In my view, the Secretariat discharges this burden by providing me with detailed information as to how the fee estimate has been calculated, and by producing sufficient evidence to support its claim.

In its representations, the Secretariat indicated that, even though it was not obliged to do so under the Act, it created a record that was responsive to the appellant's request. The information requested by the appellant did not exist in the form requested by him. The Secretariat states:

> To create these records, Ministry staff searched through approximately 650 files and manually recorded the information according to position, division, branch and classification ...
> ...
>
> ... this estimate is a result of the advice of the Human Resources Manager of Administrative Services. We submit that as a result of this thorough consultation between experienced staff, the estimate is both accurate and reasonable. This fee estimate is based on the actual time taken to physically prepare the requested record. Therefore, it is not so much an "estimate" as an accounting of the actual amount of work taken to create the document.

The Secretariat provided this office with a copy of the record it had created in addition to a memo from the employee who created it stating the amount of search time required.

In my view, the Secretariat has provided insufficient evidence to substantiate its fee estimate. Apart from the number of files searched and the number of hours taken, the Secretariat's representations contain no explanation regarding where the search was held, how much time was taken to review each file, or any other factors which would enable me to determine if the fee is in

accordance with the provisions of section 57(1)(a). Moreover, I do not know if a portion of the **search** time was actually the time expended to **create** the record the Secretariat ultimately produced. Therefore, I find that the amount of the estimated fee does not comply with the requirements of section 57(1)(a) of the Act, and the Secretariat is precluded from charging any fee for processing the appellant's request.

ORDER:

I do not uphold the Secretariat's decision to charge a fee for the search time in processing the appellant's request.

POSTSCRIPT:

The Secretariat's actions in creating a record responsive to the appellant's request were not only consistent with the spirit of the Act, but also represent an enhancement of one of the major purposes of the Act, (i.e. to provide a right of access to information under the control of institutions). However, given the circumstances of this case, I feel it is appropriate to provide the Secretariat with some guidance as to how to address requests such as this in the future.

In Order 50, former Commissioner Sydney B. Linden considered an institution's responsibility in situations such as the one in this appeal. He stated:

> In the present appeals ... the information is not recorded in the form requested by the appellant. However, records (as defined by the subsection 2(1) of the Act) which contain the information do exist in other formats which are in the custody or control of the institution. A record in the format requested by the appellant could be created from information stored in files ... To provide the appellant with access to the information stored in files, a manual search followed by collation would be required ...
> ...
>
> In cases where a request is for information that currently exists, either in whole or in part, in a recorded format different from the format asked for by the requester, in my view, section 24 of the Act imposes the responsibility on the institution to identify and advise the requester of the existence of these related records. It is then up to the requester to decide whether or not to obtain these related records and sort through and organize the information into the originally desired format.
> ...
>
> The Act requires the institution to provide the requester with access to all relevant records, however, in most cases, the Act does not go further and require an

> institution to conduct searches through existing records, collecting information which responds to a request, and then creating an entirely new record in the requested format. In other words, the Act gives requesters a right (subject to the exemptions contained in the Act) to the "raw material" which would answer all or part of a request, but, subject to special provisions which apply only to information stored on computer, the institution is not required to organize this information into a particular format before disclosing it to the requester.

In the present appeal, prior to undertaking the manual search of its files in order to create a record responsive to the request, the Secretariat did not advise the appellant that the information did not exist in the format he had requested. In my view, the Secretariat should have advised the requester of this situation, and determined if he wished the Secretariat to proceed to create a record from the "raw data". In this way, prior to undertaking the potentially time-consuming and expensive task of creating a record, the Secretariat would have known if the appellant was still interested in receiving the information in the format requested.

Original signed by: July 7, 1993
Anita Fineberg
Inquiry Officer