



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER M-228

Appeal M-9300262

Chatham Police Services Board



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ORDER

The Chatham Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to:

- (i) a copy of all policies and procedures of your force;
- (ii) copies of job descriptions for all employees of your force;
- (iii) copies of all Freedom of Information requests received by your force, since the inception of the Act;
- (iv) a detailed listing of all fax machines and personal computer equipment owned and operated by your force (make/model, usage, depreciation schedules), along with copies of the original purchase requisitions;
- (v) a detailed listing of all Workers' Compensation Board (WCB) claims involving your force, over the past ten (10) years, including those which are currently active; this information should include, for example, date/nature of injury/claim, length of claim, treatment;
- (vi) a detailed listing of all arrests made by your force over the past 10 years, including those to-date for 1993 (please include date, arrested for);
- (vii) copies of your force's current operating budget, as well as copies of budgets for the past ten (10) years;
- (viii) a copy of your force's recent annual report;
- (ix) copies of all press releases from your force, over the past twelve (12) month period;
- (x) a detailed listing of all legal challenges (civil suits, criminal actions, etc.) involving your force over the past ten (10) years; please include information on outcome of cases and settlements paid or received;
- (xi) copies of all "Use of Force" forms completed to date.

The Police provided the requester with a fee estimate of \$1,274 pursuant to section 45(1) of the Act for search time, photocopying, preparation time and shipping costs. The Police advised the requester of his right to request a waiver of the fee.

The requester asked the Police to waive the fee on the grounds that payment would cause him financial hardship, and that dissemination of the records would benefit public health and safety.

The Police decided not to waive the fee and the requester appealed this decision.

During mediation, the appellant narrowed the scope of part (iv) of his request, stating that he only required an inventory of fax machines and computers, and part (vi) of the request, stating that he only required the statistics for arrests as broken down by offence category for either the last 10 years or as far back as possible if 10 years was not available. The remainder of the request remained unchanged.

The Police were informed of the narrowed scope of the request and issued a revised fee estimate of \$1,217. The Police maintained the decision not to waive the fee.

Further mediation was not successful and notice that an inquiry was being conducted was sent to the appellant and the Police. Representations were received from the Police only. The appellant stated that he would be relying on the information he had previously provided to the Police and this office.

The sole issue in this appeal is whether the decision by the Police not to waive the fee was proper in the circumstances of this appeal.

Section 45(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 if, 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;

...

It has been established in a number of orders that the person requesting a fee waiver has the responsibility to provide adequate evidence to support a claim that such a waiver is appropriate (Orders 4, 10, 111 and P-425).

The appellant has submitted no specific arguments in support of the assertion that dissemination of the records would benefit public health and safety. Accordingly, I find that section 45(4)(c) of the Act does not apply.

In support of his request to the Police to waive the fee, the appellant provided evidence that he has a modest income and monthly expenses. The appellant did not, however, supply any evidence respecting his assets or his net worth. Without this type of information, it is not possible to determine whether payment of the fee would cause the appellant financial hardship. For the purposes of this appeal, however, I am prepared to assume that an expenditure of \$1,217 to obtain the records would cause a financial hardship to the appellant.

In Order P-473, Assistant Commissioner Irwin Glasberg interpreted the opening paragraph of section 57(4) of the provincial Freedom of Information and Protection of Privacy Act, which is similar to section 45(4) of the Act. Assistant Commissioner Glasberg stated that the phrase "in the head's opinion" means that the head of an institution has a duty to determine whether it is fair and equitable in a particular case to waive a fee, and the Commissioner or his delegate has the statutory authority to review the correctness of that decision.

In their representations, the Police state:

After careful consideration of [the appellant's] representations, as well as weighing the financial burden and staff cut backs forced on our Police Service by the Social Contract and other economic problems, I denied the request of the fee waiver ...

Having considered the representations received and based on the evidence provided to me, it is my view that it would not be "fair and equitable" to waive the fee, in the circumstances of this appeal. In coming to this conclusion, I have considered the manner in which the Police have attempted to respond to the appellant's request; the fact that the request involves a very large volume of records; that while the appellant narrowed the scope of his request this did not result in a substantial reduction in the size of the record; that the appellant has not advanced a compromise solution which would reduce the costs; and that waiving of the fee will shift an unreasonable burden of the cost of access from the appellant to both the Police and the public, resulting in significant interference with the operations of the Police (Orders P-463, P-474 and M-166).

My conclusion, therefore, is that the decision of the Police not to waive the \$1,274 fee was based on fair and equitable grounds and was proper in the circumstances of this appeal.

ORDER:

I uphold the decision of the Police not to waive the fee.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ December 1, 1993