



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-252**

## **Appeal M-9300406**

### **The Corporation of the City of Oshawa**



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# ORDER

The Corporation of the City of Oshawa (the City) received two requests under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to information related to the responses by the City of Oshawa Fire Department (the Department) to various chemical spills occurring on the property of a named company. The first request was for access to the Department's record of responses to spills occurring on January 10, 1985, March 9, 1985 and June 1, 1985, including the number of men on the scene, the cost of time spent and materials used, plus information on the Department's response card in respect of a named address on January 12, 1988. The second request was for access to a list of the Department's responses to environmental spills at the named company's property from 1976 to date.

The City provided the requester with fee estimates of \$52.20 and \$207.30 respectively, for search, computer and preparation time and photocopying. The City stated that access to personal information contained in the records may be denied pursuant to section 14 of the Act.

The requester asked the City to waive the fees on the grounds that disclosure of the records would benefit public health and safety. The City decided not to waive the fees and the requester appealed this decision.

During mediation of the appeal, the appellant confirmed that he did not dispute the calculation of the fee estimate.

Mediation of the appeal was not successful and notice that an inquiry was being conducted was sent to the appellant and the City. Representations were received from both parties.

The sole issue in this appeal is whether the City's decision not to waive the fees was proper in the circumstances of this appeal.

Section 45(4)(c) of the Act reads:

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,

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).

In Order P-474, Assistant Commissioner Irwin Glasberg found that the following factors are relevant in determining whether dissemination of a record will benefit public health or safety:

1. Whether the subject matter of the record is a matter of public rather than private interest;

2. Whether the subject matter of the record relates directly to a public health or safety issue;
3. Whether the dissemination of the record would yield a public benefit by a) disclosing a public health or safety concern or b) contributing meaningfully to the development of understanding of an important public health or safety issue;
4. The probability that the requester will disseminate the contents of the record.

In support of his request for a fee waiver, the appellant indicates that the Department has been called to assist with chemical spills on the property of the company but, contrary to the Environmental Protection Act, certain spills have not been reported to the Ministry of the Environment. The appellant indicates that the records are required to stop criminal actions.

In my view, the existence of a grave environmental hazard is a matter of considerable importance to the general public. In addition, it is my view that records of the Department's response to hazardous spills relate to a public health and safety issue. Whether the spill occurred on public or private property is not relevant.

Having reviewed a sample of the records, I am not convinced that dissemination of the requested records would contribute meaningfully to the development of understanding of an important public health or safety issue, such as environmental pollution or hazards. It is not clear to me that dissemination of the records would yield a public benefit by disclosing a public health or safety concern.

Additionally, the appellant did not supply any evidence respecting his intention or ability to disseminate the records, and I am not satisfied that these records, if they are ultimately subject to release, will likely be disseminated to the public.

In Order P-474, 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.

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 fees in the circumstances of this appeal. In coming to this conclusion, I have considered the manner in which the City has 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 fees will shift an unreasonable burden of the cost of access from the appellant to both the City and the

public, resulting in significant interference with the operations of the City (Orders P-463, P-474 and M-166).

My conclusion, therefore, is that the decision of the City not to waive the fees was based on fair and equitable grounds and was proper in the circumstances of this appeal.

**ORDER:**

I uphold the decision of the City not to waive the fees.

Original signed by:  
Holly Big Canoe  
Inquiry Officer

January 24, 1994