



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

ORDER P-716

Appeal P_9400079

Ministry of Community and Social Services



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NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The appellant has requested copies of records from the Ministry of Community and Social Services (the Ministry). Specifically, the requester asked for a copy of a report on the hostel system and certain records relating to this report.

The Ministry provided the requester with a copy of the report on the hostel system and also provided the requester with a fee estimate of \$144.00 for the remainder of the records. In its decision letter, the Ministry did not make a final decision on access, but stated that its preliminary review indicated that the following exemptions could apply to these records:

- cabinet records - section 12
- advice or recommendations - section 13(1).

The requester appealed the amount of the fee estimate. During mediation the Ministry reduced the record preparation time by one hour, thereby reducing the total fee estimate to \$120.00.

A notice of inquiry was provided to the parties to the appeal. Representations were received from both the appellant and the Ministry.

DISCUSSION:

FEE ESTIMATE

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.

Section 6 of Regulation 460 made under the Act states, in part:

The following are the fees that shall be charged for the purposes of subsection 57(1) of the Act:

...

3. For manually searching for a record after two hours have been spent searching, \$7.50 for each fifteen minutes spent by any person.
4. For preparing a record for disclosure, including severing a part of the record, \$7.50 for each fifteen minutes spent by any person.
- ...

The Ministry's fee estimate is broken down as follows:

Manual Search charges:		
4 hours x \$24.00 =		\$96.00
Record preparation charges:		
1 hour x \$24.00 =		\$24.00
TOTAL		\$120.00

In its representations, the Ministry states that the rate used to calculate the fee estimate was \$6.00 for each quarter hour, rather than \$7.50, as allowed for by the Act. The Ministry also submits that, in view of the number of documents involved in this request, the fee estimate is reasonable.

The Ministry indicates in its representations that approximately 21 files, comprising 17 vertical inches and 6 computer diskettes, were found to be responsive to the appellant's request. However, the Ministry does not explain where the search for the responsive records was conducted, by whom the search was conducted, or how extensive it was.

In reviewing the Ministry's fee estimate, my responsibility under section 57(1) of the Act is to ensure that the amount estimated is reasonable in the circumstances. In this regard, the burden of establishing the reasonableness of the estimate rests with the Ministry. In my view, this burden can be discharged if the Ministry provides me with detailed information as to how the fee estimate has been calculated, and if it produces sufficient evidence to support its claim.

The Ministry has provided no evidence as to the manner in which the requested records are kept and maintained and what actions were necessary to locate and retrieve the requested records. Therefore, in my view, it did not justify why the search was so lengthy and how the search charges were calculated. The Ministry has provided no evidence whatsoever to explain or support the record preparation charges. Accordingly, the Ministry is precluded from charging any fee for processing the appellant's request.

In responding to this request, the Ministry relied on the fee estimate and interim decision approach outlined in Order 81. However, Order 81 explicitly states that this approach is available in circumstances where the responsive records are unduly expensive to produce for inspection by an institution in making a decision. In the circumstances of this appeal, the responsive records had already been located at the time of issuing the fee estimate. Even if I were to accept the amount of search time referred to in the representations, I would not consider

that this was an appropriate case for an interim decision and fee estimate because of the limited amount of time involved. In my view, the Ministry ought to have issued a final access decision.

ORDER:

1. I order the Ministry to issue a final access decision to the appellant within twenty-one (21) days after the date of this order, without charging a fee.
2. In order to verify compliance with Provision 1 of this order, I order the Ministry to provide me with a copy of the decision letter which is sent to the appellant pursuant to that provision, within twenty-five (25) days after the date of this order. This should be sent to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: _____
John Higgins
Inquiry Officer

_____ June 30, 1994