



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

ORDER P-700

Appeal P-9400053

Ministry of the Attorney General



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/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

ORDER

BACKGROUND:

The Ministry of the Attorney General (the "Ministry") received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to:

copies of all non Court imposed settlements and agreements to settle, entered into by the Province of Ontario, whether with or without any admission of liability, over the last six years, pertaining to breach of confidence and/or invasion of privacy by any operational unit of the Province of Ontario.

The Ministry contacted the requester to clarify the request. The requester verbally provided an example of the type of record covered by his request.

The Ministry produced for the requester an interim decision and fee estimate of \$45,000, indicating that a deposit of \$22,500 was required for the Ministry to continue to process the request.

The requester applied for a fee waiver which was rejected by the Ministry. The requester subsequently appealed the Ministry's decision on the fee estimate and its refusal to waive the fee.

Mediation was unsuccessful and notice that an inquiry was being conducted was then sent to the Ministry and the appellant.

The Ministry issued a revised interim decision and fee estimate in the amount of \$1,746. It indicated that access to any records would likely be denied pursuant to sections 19 and 21 of the Act. Although not specifically stated in this decision, the Ministry implied that a final decision on access would be issued once all of the responsive records had been retrieved and reviewed by the Ministry.

Representations were received from both parties based on the revised fee estimate.

The revised estimate was broken down as follows:

Search Time

Review of Registry Book		
= 12 hours x \$30 per hour	..	\$ 360
578 cases x 5 minutes per file		
= 2390 minutes, or 48.2 hours		
= 48.2 hours x \$30 per hour	..	1,446

Less first 2 hours	..	- 60
Revised Estimated Total:	..	\$1,746
Preparation Time (to be determined) xx hours @ \$30 per hour		
Photocopying Charge (to be determined) xx pages @ \$0.20 per page		

ISSUES:

The issues arising in this appeal are:

- A. Whether the amount of the estimated fee was calculated in accordance with section 57(1) of the Act.
- B. Whether the Ministry's decision not to waive the fee was proper in the circumstances of this appeal.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the amount of the estimated fee was calculated in accordance with section 57(1) of the Act.

Section 57(1) of the Act states:

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 45(1) of the Act:

1. For photocopies and computer printouts, 20 cents per page.
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.

In reviewing the Ministry's fee estimate, my responsibility under section 57(5) 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.

I will now examine each of the steps taken by the Ministry in its calculation of the estimate to ascertain the reasonableness of the fee.

SEARCH CHARGE

The Ministry's representations include the sworn affidavit of the law clerk who conducted the search which formed the basis of the Revised Interim Decision. She explained that, contrary to the Ministry's initial view, a faster and more efficient search for relevant records could be carried out. This could be done by using a list of Ministry files in the Central Records Registry Book (the CRRB) which contains information about the nature of a file. The CRRB contains approximately 1620 pages that would need to be reviewed.

The clerk's review of a representative sample of 70 pages from the CRRB took approximately 30 minutes. She therefore estimated that 12 hours would be required to review the entire CRRB to identify possibly relevant records.

From her review of the 70 pages, the clerk found 25 files that might contain responsive records and she reviewed 12, examining the Notice of Action against the Crown and the

Statement of Claim which would indicate if the action involved breach of confidence and/or invasion of privacy. This review took between three and five minutes per file.

Based on this exercise, the clerk calculated that out of 1620 pages, it would be necessary to review 578 litigation files. This figure was arrived at by determining there was one potentially responsive court file every 2.8 pages.

Based on the estimated search time, a fee estimate of \$1,746 was calculated. This figure was calculated as follows:

- (a) Review of record books to locate relevant files: 12 hours;
- (b) Review of 578 files at 5 minutes per file: 48.2 hours;
- (c) With the first two hours of search time provided free of charge, 58.2 hours may be charged for at \$30 per hour.

Based on the very detailed and comprehensive affidavit and representations, I am satisfied that the charges for the search time are appropriate.

PHOTOCOPIES/PREPARATION TIME

The Ministry did not submit any representations on the charges for preparation time although, as I have stated, it did indicate that certain exemptions might apply to portions of the records. Given that it did undertake a search and located a representative sample of the records, it could have provided this information. As it is, I have no evidence on which to allow the Ministry to charge for preparation time.

Pursuant to the Regulations I allow the Ministry to charge photocopying costs of \$0.20 for each page of the record that is disclosed to the appellant.

ISSUE B: Whether the Ministry's decision not to waive the fee was proper in the circumstances of this appeal.

The appellant seeks a fee waiver on the grounds that payment will cause him financial hardship (section 57(4)(b)) and that dissemination of the record will benefit public health and safety (section 57(4)(c)). These sections of the Act state:

A head shall waive the payment of all or any part of an amount required to be paid under this Act where, 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;

As far as the factor under section 57(4)(b) is concerned, although requested to do so, the appellant has provided no evidence, either to this office or to the Ministry, to support his claim that payment of the fees will cause him financial hardship. He has provided no specific information to assist me in determining this issue. Therefore, I am unable to conclude that payment of the fee would cause him financial hardship.

The appellant submits that access to the information would be in the public interest. In his submissions he states:

... I believe that this historical, factual information that I'm requesting is also in the public interest as it will demonstrate how well the Province has complied with the Privacy Act. Any corrective action that may be required to be taken can only come out of interpreting the requested information and would benefit public health and safety.

In particular, as the Province is promoting alternative dispute resolution as an alternative to litigation, access to information in order to reasonably develop an informed position to enable one to proceed to such discussions, becomes mandatory.

Considering that the appellant's request is for records relating to the terms of settlement of breach of confidence or invasion of privacy claims, I do not believe that it would be reasonable to expect that records responsive to this request would relate directly to a health or safety issue. Nor do I find that dissemination of these records would yield a public benefit by disclosing a public health or safety concern or contribute meaningfully to the development of understanding of an important public health or safety issue. In fact, the appellant has not indicated that these records, if they are ultimately subject to release, will likely be disseminated to the public.

The "public interest" as generally described by the appellant is not one of the criteria for a fee waiver listed in section 57(4) of the Act. The wording of this section creates an

exhaustive list of the matters to be considered by the head in determining if waiver of all or any part of the fee is appropriate (Order 5).

In summary, I am satisfied that the Ministry's decision not to waive the fee is fair and equitable in the circumstances of this appeal.

ORDER:

1. I uphold the Ministry's decision to charge \$1,746 for search time.
2. I allow the Ministry to charge photocopying costs at a rate of \$0.20 per page for each page of the record to be disclosed to the appellant.
3. I do not allow the Ministry to charge for preparation time.
4. I uphold the Ministry's decision not to waive the fee.

Original signed by: _____
Anita Fineberg
Inquiry Officer

_____ June 13, 1994