



Information and Privacy
Commissioner/Ontario

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

ORDER P-870

Appeal P-9400624

Ministry of Health



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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 submitted a request to the Ministry of Health (the Ministry) for access to the following information: all costs associated with Proscan incurred by a named psychiatric hospital (the hospital) for the past three fiscal years, including staff, telephone and computer costs, and information about the impact of Proscan on department budgets. Proscan is a computer system designed to measure clinical and administrative activity.

In responding to this request, the Ministry followed the procedure for a fee estimate and interim access decision set out in Order 81. The decision letter advised the appellant that the Ministry anticipated granting full access to the requested information, and quoted a total fee estimate of \$1,033.50. A deposit in the amount of \$516.75 was requested.

The Ministry's decision letter also indicated that, after receipt of the deposit, the Ministry will require an extension of the time limit for responding to the request, as contemplated in section 27(1)(a) of the Act.

The letter of appeal only indicates that the appellant wishes a review of the amount of the Ministry's fee estimate, and accordingly, the sole issue to be decided in this order is whether the fee estimate is in accordance with the terms of the Act and the applicable regulation.

A Notice of Inquiry was sent to the appellant and the Ministry. Representations were received from the Ministry only.

DISCUSSION:

FEE ESTIMATE

Section 57(1) of the Act reads as follows:

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 Reg. 460, R.R.O. 1990 (the Regulation), reads, in part:

The following are the fees that shall be charged for the purposes of subsection 57(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.
...

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.

The Ministry's decision letter broke down its fee estimate as follows:

36.25 hours search time (less two free hours) @ \$30.00 per hour	\$1,027.50
Photocopying charges - estimated 30 responsive pages @ \$0.20 per page	\$ 6.00
TOTAL	\$1,033.50

In my view, given the extensive search time required, this was an appropriate case for the Ministry to follow the interim access decision and fee estimate procedure set out in Order 81, as it has done. One of the methods approved in Order 81 for calculating a fee estimate is to consult a Ministry employee who is knowledgeable about the files to which access has been requested. Another method mentioned with approval in Order 81 is representative (as opposed to random) sampling.

In its representations, the Ministry provided a further explanation of how the estimated fees were calculated. It indicated that the following searches would be required to locate responsive records:

- a manual search of current invoices
- a separate search for computer costs, since these invoices are stored separately
- a search in the payroll office to determine salary costs associated with data entry
- a search of telephone billings to locate information relating to the cost of the telephone line associated with Proscan.

The fourth search noted above (relating to telephone billings) was projected to be the most time-consuming of all, since charges relating to the Proscan line are not levied by themselves; rather, they are part of the hospital's monthly telecommunications bill.

The parts of the fee estimate relating to the first three searches were prepared by consulting experienced employees of the hospital. In the case of the manual search of invoices, and the search relating to computer costs, the individuals consulted were the Systems Manager and the Systems Co-ordinator. With regard to salary costs, the Ministry consulted the hospital's Financial Officer and Human Resources Manager. Based upon the information provided, I am satisfied that these individuals are "experienced employees" in the sense contemplated in Order 81, and I find that this was a reasonable way to arrive at these parts of the estimate.

With respect to the fourth search, relating to telephone billings, the estimate was calculated by conducting a review of one month's billings and extrapolating the results. In my view, for this type of record, this would qualify as a representative sample. I find that this was also a reasonable way to estimate these costs.

The amounts charged for all items in the estimate are in accordance with the provisions of the Regulation. Moreover, I am satisfied, based upon the Ministry's representations, that extensive consideration was given to the potential locations of responsive records and the number of responsive pages which are likely to exist.

The Ministry has also indicated that, with respect to the fourth search referred to above (relating to telephone costs), over four thousand pages of records would have to be reviewed. For these reasons, I find that the estimated fees quoted in the Ministry's decision letter are reasonable.

Accordingly, I uphold the Ministry's fee estimate. If the appellant chooses to pay the requested deposit, and the actual search time or number of pages to be copied is less than the estimate, the Ministry will be obliged to reduce its fee accordingly.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____

February 17, 1995

John Higgins
Inquiry Officer