



Information and Privacy
Commissioner/Ontario

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

ORDER P-938

Appeal P-9500037

Ministry of Environment and Energy



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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 Ministry of Environment and Energy (the Ministry) received a request for a list of Ministry employees, and those of the Northwest Health Unit, who had knowledge of the requester's sewage system prior to 1990.

The Ministry denied access to "a list of employees" as no record exists. However, in an attempt to respond more fully to the request, the Ministry's decision indicated that it could conduct a search through its records holdings and extract those pages on which an employee's name was located. The decision also indicates that the estimated fee to provide this information is \$64.00, and asks the appellant to pay a deposit in the amount of \$32.00.

In appealing the Ministry's decision, the appellant simply indicated that he seeks a copy of the names of employees of the Northwestern Health Unit and copies of the five pages referred to in the decision letter. The Commissioner's office has interpreted this as an appeal of the fee estimate only.

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

DISCUSSION:

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 the fee estimate as follows:

- | | |
|---|----------------|
| • search time, 2 hours @ \$30.00/hr
(first two hours have been subtracted) | \$60.00 |
| • photocopying a maximum of 5 pages
@ \$0.20 per page | \$ 1.00 |
| • courier | \$ 3.00 |
| • TOTAL | \$64.00 |

In its representations, the Ministry indicates that the estimate provided to the appellant represents only a small portion of the cost of responding to this request. In order to respond to the request, the Ministry would be required to look through files in three areas as well as log books used by abatement officers and investigators, the number of which, at this time is unknown. The Ministry estimates that from the time the Ministry first had contact with the appellant (in 1975) until 1990, log books for approximately 7 field staff (which include former staff) would have to be located and read. The Ministry further estimates that abatement, prosecution and Legal Services Branch files cumulatively amount to approximately 31 inches of documentation.

The Ministry provided estimates from one abatement officer familiar with the appellant's files and a counsel in the Legal Services Branch who has conducted searches through these files in response to previous access requests by the appellant. They estimate that the actual time to search for responsive records would be between 20 to 24 hours. The Ministry also indicates that it expects to locate some records which would be responsive to the request.

In my view, although the amounts specified for search time are considerably lower than would be allowable under the Regulation, the calculation is consistent with it. In addition, the amount specified for photocopying is consistent with the amounts allowed by the Regulation, and the provisions of section 57(1)(d) would permit the Ministry to recover its courier costs.

In my view, all of the amounts estimated by the Ministry are reasonable in the circumstances and I uphold its

fee estimate. If the appellant chooses to pay the requested deposit and the actual search time, number of pages to be copied, or amount of shipping charges 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: _____

Laurel Cropley
Inquiry Officer

_____ June 6, 1995