



Information and Privacy
Commissioner/Ontario

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

ORDER P-890

Appeal P-9400663

Ministry of Housing



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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 Housing (the Ministry) received a request for information concerning rent review applications. The first part of the request related to a specific property under review. The requester also sought extensive information on all rent reduction applications filed in the province since the introduction of the Rent Control Act.

In its initial decision letter, the Ministry identified the records responsive to the first part of the request, which it advised were located at the Scarborough Rent Control Office. The Ministry also indicated that most of the information responsive to the second part of the request could be accessed from four of its rent control computer systems.

This decision contained a fee estimate of \$2,662.83. The Ministry stated further that a decision on access could only be made on a final review of the records but that "exemption(s) might apply to the records". The requester applied for a waiver of the fee on the basis of financial hardship.

The Ministry subsequently issued a second decision letter, in which it denied the request for the fee waiver. This letter provided a more detailed "interim" access decision on the records, indicating that the invasion of privacy exemption, (section 21 of the Act), would apply and that the requester would be granted access to approximately 25 percent of the records.

The requester appealed the Ministry's denial of the fee waiver, its calculation of the fee estimate and the provision of an interim decision on access by the Ministry, rather than a final access decision.

A Notice of Inquiry was provided to the Ministry and the appellant. Representations were received from both parties.

DISCUSSION:

INTERIM ACCESS DECISION

I will first consider whether the Ministry's decision to make an interim access decision, rather than a final decision, was appropriate in the circumstances of this appeal.

Order 81 addresses the situation in which a record may be "unduly expensive to produce for inspection by the head in making a decision ... whether the undue expense is caused by either the size of the record, the number of records or the physical location of the record within the institution." In such a case, the head can issue an interim decision indicating to the requester the degree of access which he or she is likely to receive, together with a reasonable estimate of the proposed fees.

The Ministry has not indicated that the records at issue are unduly expensive to produce for inspection, such

that the Order 81 procedures should apply. The Ministry has stated in its representations that the records responsive to the first part of the request, comprising 603 pages, are located in the rent review files at the local rent control office.

The records responsive to part two of the request may be accessed from four computer systems. The Ministry states that it has received 2,967 rent reduction applications to date. The Ministry explains that it may have to print one page, per system, per address (application) to retrieve all the requested information. By my calculation, the Ministry may thus be required to print out 11,868 pages. The Ministry does not claim that it must develop a computer program to access this information.

The Ministry's representations go on to state that:

It should be noted that rent regulation and rent control orders and working papers are standardized and that the records which make up a file have been itemized in the Rent Control Guideline for dealing with FOI requests, complete with tables indicating their releasability. Therefore, the estimate of 25% releasability is researched and appropriate, based on the principle of active dissemination which the program area adheres to.

Moreover, in its first decision letter, the Ministry described the specific information which it would be able to provide from each of the four computer systems.

It is true that the requested information consists of a very large number of pages (12,471 pages in total). However, the records related to the specific property under review are located in a discrete file in a local office. The records to be produced from the four computer systems consist of documents containing the same, specific information as outlined in the Ministry's first decision letter. Thus, while this information will be contained in the records for each of the 2,967 rent reduction applications, the type of information which the Ministry must review in order to make its access decision is the same.

Moreover, the records are standardized and the Ministry guidelines explain how the records should be prepared or severed under the Act. Accordingly, based on the information provided by the Ministry, I do not believe that this is a situation in which the records are unduly expensive to produce for review by the Ministry prior to making a final decision on access. Accordingly, I find that this was not a situation in which the Ministry should have issued an interim decision on access.

Therefore, I am ordering the Ministry to provide the appellant with a final decision on access to all of the records at issue in this appeal in accordance with section 29 of the Act. In particular, the Ministry should identify the records or the parts of records to which the personal privacy exemption will apply so that the appellant will be in a position to know the information that will be released to him upon payment of the fees upheld in this order.

In order that this appeal may proceed as expeditiously as possible, I will now consider the issues of the fee

estimate and the waiver of the fee.

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 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:

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

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 will be discharged if the Ministry provides the Commissioner's office with detailed information as to how the fee estimate has been calculated and if it produces sufficient evidence to support its claim.

PHOTOCOPIES AND COMPUTER PRINTOUTS

The Ministry has estimated a cost of \$120.60 for photocopies, based on \$0.20 per page for 603 pages of rent review records relating to the specific residential complex. It has also charged \$0.20 for each page of the computer printouts. I find that both of these charges are in accordance with the Regulation. Accordingly, I uphold a fee of \$0.20 per page for each photocopy and computer printout provided to the appellant.

EMPLOYEE TIME

The Ministry's fee estimate includes an amount of \$166.38 which is shown as "employee time". In its representations, the Ministry explains that this represents overtime for temporary staff, which would be necessary to deal with the request. The Ministry does not specify what tasks the temporary staff would be performing regarding the request.

In its submissions, the Ministry clearly indicates that it did not apply any preparation charges in its calculation of the fee estimate. Nor has it provided any evidence that the "employee time" represents the time required to search for the records. The Ministry has confirmed that this time, therefore, represents the amount which it will have to pay to employees who incur overtime to photocopy the records.

Previous orders have determined that \$0.20 per page is the maximum amount that may be charged for photocopying. This includes the cost of an individual "feeding the machine" (Orders 184, P-260 and P-490).

Therefore, I do not allow the \$166.38 charge for employee time.

SHIPPING COSTS

The Ministry has included a charge of \$2.25 for Purolator. Assuming that this charge represents the cost of shipping the records to the appellant, I would allow this amount.

PERSONAL INFORMATION

Section 57(2) of the Act states:

Despite subsection (1), a head shall not require an individual to pay a fee for access to his or her own personal information.

The appellant maintains that the records related to the review of the specific property constitute his personal information. He, therefore, maintains that he should not be charged for access to this documentation.

Personal information is defined in section 2(1) of the Act, in part, as "recorded information about an identifiable individual".

The appellant states that he has "initiated" some of the applications related to the specific property and that he "represents the interests of many tenants at [the specific property], as well as the general interests of all the tenants in that building ..." However, he has provided no evidence that he acts as an agent of any of these individuals for the purposes of this appeal.

Accordingly, I do not find that the records related to the specific property application contain his personal information.

FEE WAIVER

The appellant seeks a fee waiver on the grounds that payment will cause him financial hardship (section 57(4)(b) of the Act). This section states, in part:

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,

whether the payment will cause a financial hardship for the person requesting the record;

It has been established in a number of previous orders that the person requesting a fee waiver must justify such a request. In addition, I am mindful of the Legislature's intention to include a user pay principle in the Act, as evidenced by the provisions of section 57.

The appellant provided the Ministry with some evidence of his monthly income, in support of his request for a fee waiver. However, it does not appear that he provided the Ministry with any evidence to indicate his monthly expenses when he requested the fee waiver.

In his representations, the appellant states the amount of his gross monthly income, his monthly expenses and the amount of disposable income. The appellant however, has not provided any information about his assets and liabilities which would give a clearer picture of his actual financial situation.

Even if I accept that payment of the fee would constitute a financial hardship for the appellant, I must go on to consider whether it was fair or equitable for the Ministry **not** to have waived payment of the fee in this particular case.

Previous orders have set out a number of factors to be considered to determine whether a denial of a fee waiver is "fair and equitable". These factors are:

- (1) the manner in which the institution attempted to respond to the appellant's request;
- (2) whether the institution worked with the appellant to narrow and/or clarify the request;
- (3) whether the institution provided any documentation to the appellant free of charge;
- (4) whether the appellant worked constructively with the institution to narrow the

scope of the request;

- (5) whether the request involves a large number of records;
- (6) whether or not the appellant has advanced a compromise solution which would reduce costs.

In my view, a further consideration to be taken into account when deciding whether a fee waiver is fair and equitable, is whether the waiver of the fee would shift an unreasonable burden of the cost from the appellant to the institution.

The Ministry states, in its representations, that there are a large number of records and that it attempted to work with the appellant to narrow the scope of the request. The Ministry indicates that it proposed a compromise by suggesting that the appellant view the rent review records for the specified residential complex at the Scarborough Rent Control Office and that it supplied some information at no charge.

The Ministry further states that the estimated fees were much lower than the actual cost of processing the request because not all of the actual staff cost was included in the estimate.

I have carefully considered the representations of the parties and, while I acknowledge that payment of the fee may cause a financial hardship for the appellant, it is clear that the Ministry has attempted to compromise to reduce the costs while the appellant has not been willing to modify his request. In particular, I note that the Ministry did not charge any fees for preparing the records. I have also considered that some information was provided at no charge, that the estimated fee was less than the actual cost of processing the request, and that the Act contemplates a user pay principle.

I also find that allowing a fee waiver in this case would shift an unreasonable burden of the cost from the appellant to the Ministry. In summary, in the circumstances of this appeal, I find that the Ministry's decision not to waive the fee was fair and equitable.

ORDER:

1. I allow the Ministry to charge photocopying costs and computer printout costs at a rate of \$0.20 per page for each page of the records to be disclosed to the appellant.
2. I allow the Ministry to charge shipping costs in the amount of \$2.25.
3. I do not allow the employee costs charged by the Ministry.
4. I uphold the Ministry's decision to deny a fee waiver.

5. I order the Ministry to make a final access decision with respect to the appellant's request within twenty (20) days of the date of this order. This decision should be made in accordance with section 29 of the Act and without recourse to a time extension.
6. I order the Ministry to provide me with a copy of the access decision letter issued to the appellant pursuant to Provision 5 of this order, within twenty-five (25) days of the date of this order. This copy of the decision letter should be forwarded to my attention, c/o Information and Privacy Commission/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: _____
Anita Fineberg
Inquiry Officer

_____ March 15, 1995

POSTSCRIPT:

I appreciate that where, as in this case, the records responsive to a request are voluminous, an institution may have difficulty providing a final access decision within the 30-day time limit stipulated in the Act. However, in such a situation, the institution would have recourse to a time extension pursuant to section 27 of the Act.