



Information and Privacy  
Commissioner/Ontario

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

# ORDER P-943

Appeal P-9500012

Ministry of Citizenship



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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 Citizenship (the Ministry) received a request for access to information relating to the Advocacy Project Team and the Advocacy Commission (the Commission). The requester is particularly interested in documentation concerning the transfer of the Psychiatric Patient Advocate Office (the PPAO) to the Commission.

The request was contained in one letter and actually consisted of 10 separate requests for various categories of different, albeit related, documentation. The requester asked the Ministry to "Proceed with these 10 requests ... separately".

The Ministry advised the requester that it would respond to two of the requests separately. With respect to the remaining eight requests, the Ministry provided the requester with a fee estimate comprised of invoiced fees for search time in the amount of \$281.25 and \$60 for photocopying 300 pages at \$0.20 per page. The Ministry also advised the requester that "Additional fees may be required for preparing the records for release (i.e. severing) and photocopies. As well, the invoiced fees for temporary help may exceed the amounts estimated". It also advised that additional pages might be located once the search was completed. The Ministry did not make an access decision.

The requester subsequently wrote the Ministry raising a number of concerns with respect to the manner in which the fee estimate was calculated. He maintained that the records responsive to two of the requests contained his personal information such that no fees could be charged. He also objected to the fact that the fee estimate was combined for the eight requests. He indicated that without being able to ascertain the true estimate for each request, he could not determine which requests he could pay for and which were too expensive. He also applied for a fee waiver for those files in which the fees would be \$5 or less.

The requester also appealed the Ministry's decision to this office.

During mediation of the appeal, the appellant agreed that the only issue he would pursue would be that of whether the Ministry could issue one fee estimate for processing eight requests.

A Notice of Inquiry was sent to the appellant and the Ministry. Submissions were received from the Ministry only. The appellant advised that he would be relying on his original correspondence and representations made during the course of the appeal.

## **DISCUSSION:**

The issue which I must determine is whether it was appropriate for the Ministry to combine the eight requests into one for the purpose of searching for the records responsive to each individual request and calculating the fees. I am mindful of the fact that in Order 93, former Commissioner Sidney B. Linden found that for the purposes of a time extension appeal it was inappropriate for the institution to process multiple

requests as a single request with six parts. He stated that a requester "should not be penalized for having listed multiple requests in one letter ..."

In its submissions, the Ministry has explained why it issued one fee estimate to cover the eight requests. It also provided information on the details of the searches conducted to date and the tasks which have yet to be undertaken in order to respond to the request.

The Ministry has characterized five of the requests (940113-117) as relating to records concerning the PPAO. Another request (940118) is for all records related to the Ontario Psychiatric Patients Group (the OPPG). The OPPG is a group which has expressed its opposition to the PPAO transfer. The Ministry thus maintains that records responsive to this request would most likely be responsive to the other five requests concerning the PPAO. I also note that there is considerable overlap in the five PPAO requests both in terms of the subject matter of the requested records as well as the areas of search identified by the appellant.

The Ministry has stated that a large number of documents exist which are responsive to these six requests as well as indicating what Ministry files and departments will have to be searched to locate all the responsive records.

The Ministry next indicates that requests 940119 and 940120 are also interrelated as they both concern the recruitment of a Chair and Commissioners for the Advocacy Commission. The Ministry states that there were over 2,000 applications for appointment to the Commission and that 50 applicants were interviewed, some on more than one occasion. The Ministry indicates that all interview related files will have to be searched in order to respond to request 940120.

The Ministry then explains that, prior to issuing its fee estimate, it spent seven hours searching for the records and located approximately 300 pages of documentation. It estimated that it requires a minimum of 10-15 additional hours to complete the search. Given the amount of time thus required, and the fact that the Commission staff were working on a number of major initiatives in anticipation of the proclamation of the legislation governing its mandate, the Ministry decided to adopt "... the following practical approach to process the files ...":

- (1) conduct one comprehensive search;
- (2) hire one temporary staff to conduct the search and prepare the records for disclosure; and
- (3) issue one fee estimate

The Ministry has further explained the manner in which the Commission files are organized. The Commission does not have a centralized filing system. Staff members kept their own files with respect to an issue. The Ministry notes that, in many instances, records were copied and distributed to several employees for comment and reference. Thus, there might be duplication of the records.

The Ministry thus submits that, despite the fact that the appellant maintained that each of the eight requests should be considered separately, its view was that one search, conducted by one individual would best meet

the appellant's needs in that it would result in a more efficient search, would eliminate duplication and result in significantly lower fees.

Given the particular circumstances of this case, I agree with the Ministry that it was appropriate to combine **some** of the requests. In my view, based on the close connection between both the subject matter of requests 940113-118 and the areas to be searched to locate records responsive to these requests, it was acceptable for the Ministry to provide a fee estimate for one comprehensive search for records responsive to each of these six requests.

The records responsive to requests 940119 and 940120 relate to a completely different subject matter than the other six requests. While I note that there will be some duplication in the files which will have to be searched for these requests, there are additional numerous competition files and materials, which are completely unrelated to the first six requests, which will have to be reviewed to locate some of the records responsive to these two requests. For these reasons, I find that the Ministry should have provided a separate fee estimate for the searches required to respond to requests 940119 and 940120.

Accordingly, the Ministry should provide the appellant with a revised fee estimate separating the search charges for requests 940113-118 from those for 940119-940120. In addition, although I am satisfied that it was acceptable for the Ministry to conduct the searches in the manner I have described, I would suggest that if the Ministry is faced with a similar situation in the future, the requester should be consulted before any decision is made to combine requests for the purpose of conducting a search.

There are a number of other matters which, based on the limited scope of this appeal, are not, strictly speaking, before me but which I feel must be addressed in order that the Ministry prepare an appropriate fee estimate in this case. The Ministry should consider these points and incorporate them into the revised fee estimates I have ordered that it produce.

First of all, despite the fact that I have found that it was appropriate for the Ministry to process the requests as described above, I believe that the appellant should still be provided with the equivalent of the initial two hours of search time for each of his eight requests, as required by Ontario Regulation 459. In this way, in the words of former Commissioner Linden, quoted above, he will "... not be penalized for listing multiple requests in one letter". The Ministry has already completed seven hours of search time for which it has not charged. Thus, there are nine hours of outstanding search time for which the Ministry should not charge.

The second matter relates to the appellant's point that the records responsive to requests 940115 and 940118 contain his personal information, such that the Ministry cannot charge for access to this information.

The Ministry has indicated that, as it has not completed the search for the relevant records, it cannot yet make this determination. It has stated that no fee would be charged for personal information. When the Ministry is in a position to make this decision, it should do so in accordance with the principles set out in Order M-514. That is, it should not charge fees for any **records** which contain the appellant's personal information.

The next point which causes me some concern is the individual the Ministry proposed to conduct the searches and, as stated in its submissions, to "... prepare the records for disclosure". As I have previously indicated, the Ministry has explained why it felt that it was necessary to hire a temporary staff person to process these aspects of the requests. The Ministry has also stated that the GO Temp hourly rate is almost half (\$18.75/hour) of the allowable search and preparation charges under the Act of \$30/hour. Thus, the Ministry indicates that the amount of the fees chargeable to the appellant will be less than the costs set out in the legislation.

It may be that, if this matter proceeds, the Ministry may now have the internal staff resources to perform these tasks. Should this not be possible, I would remind the Ministry that it may not charge time for any time expended by an internal staff person to review the results of the search conducted by the temporary individual (Order P-260). In addition, if the preparation time involves making any severances to the records prior to disclosure, the decisions on these will, of course, be made by a delegated decision maker within the Ministry.

Finally, I feel that it is necessary to comment on the Ministry's decision as a whole. As I have previously indicated, the Ministry's decision provided the appellant with a fee estimate for search and photocopying charges. While the Ministry did advise the appellant that additional fees might be required for severing the records, it neither provided an estimate of these charges nor indicated which exemptions might apply to the records. (The Ministry referred to four exemptions in its submissions to this office). Furthermore, it provided the appellant with no information whatsoever about the records it had located as a result of the seven hours of search time it had already expended.

Because the Ministry had not located and reviewed all of the responsive records, I believe that it intended to provide the appellant with an interim decision on access and a fee estimate. This decision should have included a description of the records, an indication of the exemptions which might apply and consequently the degree of access which would be granted, as well as an estimate of the costs associated with preparing the records for disclosure. In this way, the appellant would have been in a position to make an informed decision as to what information he wished to pursue by paying the fee estimate (Order 81).

**ORDER:**

I order the Ministry to provide the appellant with a revised fee estimate with a breakdown of the fees associated with the search time for requests 940113-118 and those for requests 940119-940120. In preparing these revised estimates, the Ministry should ensure that it addresses the issues I have discussed above.

Original signed by:  
Anita Fineberg  
Inquiry Officer

June 13, 1995