



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

ORDER P-1142

Appeal P-9500617

Ministry of the Attorney General



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NATURE OF THE APPEAL:

The appellant is a corporation which is in the business of locating missing heirs who have inherited money from deceased individuals. The appellant submitted a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of the Attorney General (the Ministry). The request was for a list of names of persons whose estates have passed to the Public Trustee (now known as the Public Guardian and Trustee) by escheat, with corresponding dates. Escheat occurs when an individual dies without heirs.

The Ministry responded to the request with an interim access decision and fee estimate, as contemplated in Order 81. The fee estimate to locate and compile the responsive information was \$14,940 for search time and preparation of a computer program.

In response to the fee estimate, the appellant asked the Ministry to waive the fee, stating that its work is a significant public benefit and indicating that payment of the fee would cause economic hardship. In subsequent correspondence with the Ministry, the appellant explained that, as a result of its professional activities, individuals are located who might not otherwise become aware that they have inherited money. The appellant argues that access to the requested information would assist its efforts, which would benefit the individuals it locates and, because of their increased income, this would also result in a benefit to the economy generally.

The Ministry denied the appellant's fee waiver request. The appellant filed an appeal of this decision. The question of whether a fee waiver should have been granted is the only issue in this appeal.

This office sent a Notice of Inquiry to the appellant and the Ministry. Only the Ministry submitted representations.

DISCUSSION:

FEE WAIVER

The provisions of the Act relating to fee waiver appear in section 57(4). When the Ministry issued its fee waiver decision, this section (since amended by Bill 26) stated as follows:

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,

- (a) the extent to which the actual cost of processing, collecting and copying the record varies from the amount of the payment required by subsection (1);
- (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; and

- (d) any other matter prescribed in the regulations.

In Order P-474, former Assistant Commissioner Irwin Glasberg found that the appropriate standard of review for decisions under this section is one of correctness.

In order to substantiate a fee waiver request, the appellant must first demonstrate that it has met the criteria in one of the subsections of section 57(4). The appellant's waiver request states that payment of the fee would cause financial hardship (section 57(4)(b)), but the appellant has not provided any information to substantiate this claim. Nor have I been provided with any information to bring the waiver application within the criteria enunciated in section 57(4)(a), (c) or (d). In particular, the alleged benefit to individuals the appellant locates, and to the economy generally, do not relate to any of these criteria.

Accordingly, I uphold the Ministry's decision to deny the appellant's fee waiver request.

ORDER:

This appeal is dismissed.

Original signed by: _____

John Higgins
Inquiry Officer

March 8, 1996

POSTSCRIPT:

I note that one of the appellant's letters to the Ministry indicates that the appellant is willing to restrict the request to escheats of \$10,000 or more. I also note that the Ministry, in its representations, has revised its original fee estimate upwards. Although I have ruled in this order that the Ministry was justified in refusing a fee waiver, I would, nevertheless, encourage the parties to attempt to negotiate a mutually satisfactory arrangement with respect to the scope of the request, which may result in a lower fee.