



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

ORDER M-753

Appeal M_9500775

Glanmore Hastings County Museum



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Glanmore Hastings County Museum (the Museum) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to a large number of records relating to, among other things, the purchase of the Museum facility from the appellant's mother in 1971 and the subsequent operation of the Museum. The Museum responded by advising the appellant that it had located approximately 4000 pages of records responsive to portions of her request and that other records responsive to the remainder are not in the custody or under the control of the Museum.

Pursuant to section 45(1) of the Act, the Museum provided the appellant with a fee estimate of \$2,200 for the cost of search time, photocopying and shipping charges. The appellant requested that the Museum waive the fee, under section 45(4) of the Act, on the basis that it is fair and equitable to do so because the payment of such a fee would cause her a financial hardship.

After further review, the Museum provided the appellant with 950 pages of records containing her own personal information and that of her family without charge. It further advised the appellant that it had decided not to grant her request for a fee waiver.

The appellant appealed the Museum's decision to deny a fee waiver. The Museum provided the appellant with a revised fee estimate in which it delineated the fees to be charged for granting access to the remaining information responsive to her request in the following manner:

- estimated search time of 33 hours (not including two hours of fee search time) 33 hours x \$7.50 per 15 minutes = \$990
- photocopying at \$0.20 per page x 3000 pages = \$600
- shipping costs (Belleville to North York) = \$20

The total revised fee estimate is, accordingly, \$1,610. The sole issue to be determined in this appeal is whether the Museum's decision to deny the appellant's request for a fee waiver was reasonable, taking into account all of the circumstances of the request and the appeal.

DISCUSSION:

FEE WAIVER

The appellant seeks a fee waiver on the grounds that payment will cause her a financial hardship. Section 45(4) of the Act and section 8 of Regulation 517 under the Act set out the factors to be considered by the Museum when a request for a fee waiver is made. Section 45(4) states, in part:

A head shall waive the payment of all or any part of an amount required to be paid under this Act if, in the head's opinion, it is fair and equitable to do so after considering,

- (b) whether the payment will cause a financial hardship for the person requesting the record;
- ...
- (d) any other matter prescribed in the regulations.

Section 8 of the Regulation then prescribes, in part:

The following are prescribed as matters for a head to consider in deciding whether to waive all or part of a payment required to be made under the Act:

1. Whether the person requesting access to the record is given access to it.

It has been established in a number of previous orders that a 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 45.

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 Museum **not** to have waived payment of the fee. Previous orders have set out a number of factors to be considered in determining whether a denial of a fee waiver is "fair and equitable". These factors are:

- (1) the manner in which the Museum attempted to respond to the appellant's request;
- (2) whether the Museum worked with the appellant to narrow and/or clarify the request;
- (3) whether the Museum provided any documentation to the appellant free of charge;
- (4) whether the appellant worked constructively with the Museum 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.
- (7) whether the waiver of the fee would shift an unreasonable burden of the cost from the appellant to the Museum.

I have reviewed the representations of the parties and make the following findings:

1. Payment of the estimated fee would cause the appellant a financial hardship.
2. The Museum has not applied any of the exemptions contained in the Act to the records which are the subject of the request. Upon payment of the fee, full access to the requested records will, therefore, be provided.

3. The Museum made every reasonable attempt to respond to the appellant's requests and attempted to work with the appellant to narrow the request, as well as make arrangements for alternative access to the requested records through an on-site visit.
4. The Museum has provided the appellant with 950 pages of records containing the appellant's personal information and that of her family. Approximately 3000 pages of responsive records remain undisclosed.
5. The appellant has refused to narrow the scope of her request. The appellant proposed a compromise solution whereby she would attend at the Museum to review the documents responsive to the request in person and copy only those which she wanted but declined to focus the request on any specific category of records.
6. Neither the appellant nor the Museum have the financial resources to absorb the costs associated with the processing of this request, as it is presently constituted. Given the user pay principle described above, I am satisfied that the waiver of the fee would shift an unreasonable burden of the cost from the appellant to the Museum.

For the reasons set out above, I find that the decision of the Museum to deny the appellant's fee waiver request to be fair and equitable in the circumstances.

ORDER:

I uphold the Museum's decision and dismiss the appeal.

Original signed by: _____ April 12, 1996
Donald Hale
Inquiry Officer

POSTSCRIPT:

It appears from the representations of the parties that the Museum has no objection to granting the appellant complete access to all of the records requested, upon payment of the fee. The appellant has indicated her agreement to attending at the Museum to determine which documents are of interest to her, thereby narrowing the amount of time required to conduct the search, reducing the photocopying required and eliminating the shipping costs. I have upheld the Museum's decision not to waive the fee. The parties to this appeal may, however, wish to continue to pursue a mutually satisfactory resolution to this access request.