



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

ORDER M-695

Appeal M_9500508

City of Orillia



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NATURE OF THE APPEAL:

Under the Municipal Freedom of Information and Protection of Privacy Act (the Act), the appellant submitted a request to the City of Orillia (the City). The request was for information pertaining to municipal water sources. In particular, the appellant sought information about test results relating to tetrachloroethylene and trichloroethylene for the period April to December 1994, all pesticides for which tests were done in 1994, and all tests done in 1995.

The City prepared a fee estimate for responding to the request, indicating a total estimated fee of \$196.40. The City's letter also states that "[i]t is not our policy to waive the fees".

The appellant filed an appeal of this decision, stating as follows:

It seems unreasonable that, as a taxpayer of this City, I should be expected to pay a fee for information regarding the City of Orillia drinking water which my young children consume. Therefore, I request a review of the City of Orillia's fee estimate.

The appellant subsequently clarified that the issue to be reviewed in this appeal is the City's decision to deny a fee waiver.

A Notice of Inquiry was sent to the appellant and the City. Both parties submitted representations.

DISCUSSION:

FEE WAIVER

The provisions of the Act relating to fee waiver appear in section 45(4), which states as follows:

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,

- (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 section 57(4) of the provincial Freedom of Information and Protection of Privacy Act (which is the equivalent of section 45(4) of the Act) is one of correctness. In that same order, former Assistant Commissioner Glasberg also found that the phrase “in the head’s opinion” means only that the head of an institution has a duty to determine whether it is fair and equitable in a particular case to waive a fee, and this wording does not affect the statutory authority of the Commissioner and his delegates to review the correctness of that decision. I agree with these conclusions and adopt them for the purposes of this appeal.

In my view, the appellant’s comments in her letter of appeal (quoted above) relate to the issue of public health and safety mentioned in section 45(4)(c). In Order P-474, referred to above, former Assistant Commissioner Glasberg found that the following factors are relevant in determining whether dissemination of a record will benefit public health or safety under section 57(4)(c) of the provincial Freedom of Information and Protection of Privacy Act, which is the equivalent of section 45(4)(c) of the Act:

1. Whether the subject matter of the records is a matter of public rather than private interest;
2. Whether the subject matter of the records relates directly to a public health or safety issue;
3. Whether the dissemination of the records would yield a public benefit by a) disclosing a public health or safety concern or b) contributing meaningfully to the development of understanding of an important public health or safety issue; and
4. The probability that the requester will disseminate the contents of the records.

I agree with former Assistant Commissioner Glasberg’s interpretation and I adopt these factors for the purposes of this appeal.

I am satisfied that municipal drinking water test results are of public interest, relating directly to a public health issue. I am also satisfied that dissemination of this information would contribute meaningfully to the development of an understanding of the standards applied to municipal drinking water, and whether they have been met, which is an important public health issue. Finally, I believe it to be likely that the appellant would disseminate the contents of the records.

However, I must go on to consider whether it would be fair or equitable for the fee to be waived 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; and
7. Whether the waiver of the fee would shift an unreasonable burden of the cost from the appellant to the institution.

As the appellant has been advised on many occasions, the requested information is available from the Barrie Regional Office of the Ministry of Environment and Energy (MOEE). The tests in question were, in fact, conducted by MOEE. MOEE's Barrie Regional Office has confirmed that, if the appellant attends at that office, she will be shown the records free of charge. Any copies required by the appellant would be charged at the rate permitted by the Regulation (currently 20 cents per page).

Under these circumstances, I am of the view that it would not be reasonable to require the City to search for the responsive records without recovering any of its costs. I find that upholding the appellant's fee waiver request would shift an unreasonable burden of the cost to the City.

I do not uphold the appellant's request for a fee waiver.

ORDER:

This appeal is denied.

Original signed by: _____ January 30, 1996
John Higgins
Inquiry Officer

POSTSCRIPT:

As noted at the beginning of this Order, the City's decision letter states that "[i]t is not our policy to waive the fees".

Fee waivers are provided for by section 45(4) of the Act (quoted above on pages 1-2). They require the City to decide whether a waiver would be "fair and equitable" after considering several prescribed factors. In my view, this requires individual consideration each time a waiver request is made. A "policy" against granting fee waivers does not fulfil this requirement. I would recommend that the City bear this in mind when drafting future decision letters relating to fee waiver.

In this appeal, the City's representations provide case-specific reasons for not granting a waiver (relating in large part to the availability of the records from MOEE). Therefore, I am satisfied that the City's statement in its decision letter does not raise any substantive issues in this appeal.