



Information and Privacy
Commissioner/Ontario

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

ORDER P-1339

Appeal P_9600414

Ministry of Transportation



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NATURE OF THE APPEAL:

The Ministry of Transportation (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to the tender submitted by the successful bidder on a highway repaving contract, as well as the cost of spreading gravel on the highway's shoulders for the years 1985 to 1996.

The Ministry responded by advising the requester that records relating to the cost of spreading gravel for the years 1985 and 1986 do not exist. It added that four pages of records, relating to the years 1987 to 1995, would be provided in full upon payment of a fee of \$270.80. The fee estimate provided by the Ministry was comprised of one hour of search time at \$30 per hour, four hours of programmer/operator time to conduct a search of the Ministry's computerized records at \$60 per hour and 20 cents for each of the four records which are responsive to the request. The appellant also requested a fee waiver, which was denied by the Ministry.

The requester (now the appellant) appealed the Ministry's decision on the basis that the fees were excessive and also asked for a review of the Ministry's decision not to grant him a fee waiver.

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

DISCUSSION:

CALCULATION OF THE FEE

The first issue to be determined is whether the Ministry's fee estimate of \$270.80 is calculated in accordance with the Act and the Regulations made thereunder. Section 57(1) of the Act and Regulation 460, each dealing with fees, were amended in February 1996 by the Savings and Restructuring Act. The request and appeal, in this case, were both initiated subsequent to these amendments and are, accordingly, subject to the fee provisions, as amended. Section 57(1) states:

A head shall require the person who makes a request for access to a record to pay fees in the amounts prescribed by the regulations for,

- (a) the costs of every hour of manual search required 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;

- (d) shipping costs; and
- (e) any other costs incurred in responding to a request for access to a record.

Section 6 of Regulation 460 (as amended by Regulation 21/96) provides:

- 6. The following are the fees that shall be charged for the purposes of subsection 57(1) of the Act for access to a record:
 - 1. For photocopies and computer printouts, 20 cents per page.
 - 2. For floppy disks, \$10 for each disk.
 - 3. For manually searching a record, \$7.50 for each 15 minutes spent by any person.
 - 4. For preparing a record for disclosure, including severing a part of the record, \$7.50 for each 15 minutes spent by any person.
 - 5. For developing a computer program or other method of producing a record from machine readable record, \$15 for each 15 minutes spent by any person.
 - 6. The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the record if those costs are specified in an invoice that the institution has received.

The Ministry submits that its fee estimate was calculated as follows:

•	manual search time 1 hour x \$30 per hour	\$ 30.00
•	programmer/operator search time 4 hours x \$60 per hour	240.00
•	photocopies 4 x 20 cents	.80
		<hr/>
		\$270.80
		=====

Manual Search Time

With its representations, the Ministry provided an affidavit sworn by its Regional Maintenance and Operations Officer for the Northern Region who sets out in detail the nature and extent of the searches which he undertook to identify and locate records responsive to the appellant's request.

The Officer explains that one hour of search time was required in order to determine where the requested information might be located in the Ministry's computer databases. I am satisfied that this portion of the fee estimate is reasonable in the circumstances.

Programmer/Operator Time

The Operations Officer has explained in detail the nature of the searches which he undertook in various databases maintained by the Ministry in order to determine the location of the information which the appellant was seeking. He indicates that eight separate reports, totalling four pages, were retrieved. It was necessary to access databases in both Huntsville and Toronto /in two separate systems. Again, I am satisfied that this portion of the fee is reasonable.

Photocopies

The fee estimate for four pages of photocopies is in accordance with the fees which the Ministry is entitled to charge for photocopies.

In summary, I find that the Ministry's fee estimate was prepared in accordance with section 57(1) and Regulation 460.

FEE WAIVER

The appellant submits that the requirement for the payment of a fee in the circumstances of this appeal should be waived under sections 57(4)(b) and (c) of the Act. These sections read:

A head shall waive the payment of all or any part of an amount required to be paid under subsection (1) 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;
- (c) whether dissemination of the record will benefit public health or safety;

It has been established in a number of previous orders that the person requesting a fee waiver must justify the request and demonstrate that the criteria for a fee waiver are present in the circumstances (Orders 10, 111, P-425, P-890, P-1183 and P-1259). I am also 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 and this office with some information regarding his present financial situation. Based on my review of this information, I am not satisfied that the payment of the estimated fee would cause the appellant a financial hardship within the meaning of section 57(4)(b). I find that the appellant's income, as reported in his

representations, is such that no financial hardship would be caused by being required to pay the fee estimate.

In addition, the appellant argues that the dissemination of the requested information will benefit public health and safety. The appellant is an advocate for bicycle safety and is attempting to promote a program whereby the province and municipalities within Ontario would pave the shoulders of our roads and highways so as to ensure a safer environment for cyclists. He argues that by examining the cost of spreading gravel on the shoulders of a particular, 20 kilometre highway over a number of years, he will be able to demonstrate the savings to be realized if those shoulders were to be paved.

The Ministry submits that the appellant has not established that public safety and health would be sufficiently advanced, if at all, by the disclosure of the requested records, such as to warrant the waiving of fees on that ground.

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 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 believe it to be likely that the appellant would disseminate the contents of the records, particularly in light of the appellant's high profile and success in bringing these issues to the attention of the public through the media. In addition, I am satisfied that issues surrounding bicycle safety on public streets and highways are a public, rather than a private interest. In my view, however, the subject matter of **these records** does not relate directly to a public health or safety issue. I am also not satisfied that the dissemination of **this information** would contribute meaningfully to the development of an understanding of the issues relating to bicycle safety. Accordingly, I find that the appellant has not satisfied the criteria established in Order P-474 for the application of section 57(4)(c) to the records which are responsive to his request.

By way of summary, I find that the appellant has not established that it would be fair and equitable for the fee to be waived in this particular case, either on the basis that the payment of a fee would cause him a financial hardship or that the dissemination of the record would benefit public health or safety.

ORDER:

I uphold the Ministry's fee estimate and its decision to deny the appellant a fee waiver.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ February 5, 1997