



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

ORDER P-1393

Appeal P_9700003

Ministry of Health



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NATURE OF THE APPEAL:

The appellant submitted a request to the Ministry of Health (the Ministry) under the Freedom of Information and Protection of Privacy Act (the Act) for information relating to the funding of defibrillators in Ontario between March 1986 and April 1994. The Ministry provided the appellant with an interim decision which included a fee estimate of \$6090. In its interim decision, the Ministry indicated that approximately 20% of the information in the records would likely be severed under sections 17(1) and 21 of the Act.

The appellant appealed the Ministry's interim fee estimate. At the same time, she submitted a request to the Ministry for a fee waiver on the basis that payment of the fee will cause her financial hardship (section 57(4)(b)) and dissemination of the record will benefit public health or safety (section 57(4)(c)).

In an effort to resolve the appeal and help the appellant narrow her request, the Ministry provided the appellant with a list prepared by the Emergency Health Services Branch which outlines the contents of a typical file regarding the defibrillation program. As a result, the appellant narrowed her request as follows:

1. All proposals submitted to the Ministry by a hospital designated or eligible to be designated as an Advanced Life Support - Base Hospital (the base hospital) regarding advanced life-support services, specifically defibrillators for each of seven named areas in the province of Ontario;
2. All correspondence to and from the Ministry to the base hospital regarding acceptance or rejection [of the proposals]; and
3. Confirmation that the guidelines for 1996/97 are the most current ones used. If not, a copy of the most current guidelines used.

The Ministry issued a revised fee estimate for the information described above in the amount of \$1785.80.

The Ministry responded to the appellant's request for a fee waiver at this time, by asking her to provide additional information regarding her financial circumstances. The Ministry also requested the appellant to provide submissions with respect to whether dissemination of the record will benefit public health or safety. The appellant did not submit further information to the Ministry and the Ministry treated the appellant's request for a fee waiver as abandoned.

The appellant still maintained that the amount of the revised fee estimate was excessive. She also appealed the failure of the Ministry to grant her a fee waiver.

This office provided a Notice of Inquiry to the Ministry and the appellant. Both parties submitted representations in response to this Notice. In her representations, the appellant indicates that she no longer requires the records responsive to Part 3 of her request.

Additionally, she states that she is willing to pay the photocopy charges of \$0.20 per page, and this part of the fee estimate is not in dispute.

The issues to be determined in this appeal are the reasonableness of the fee estimate and the appropriateness of the Ministry's decision not to grant the appellant a fee waiver.

DISCUSSION:

CALCULATION OF THE FEE

The first issue to be determined is whether the Ministry's fee estimate of \$1785.80 is calculated in accordance with the Act and the Regulations made thereunder. Section 57(1) of the Act 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:

Parts 1 and 2:	search time 40 hours @ \$30 per hour	\$1200.00
	photocopies (1485 pages @ \$.20/page)	297.00
	severing time (285 pages) 9.5 hours @ \$30 per hour	285.00
Part 3:	photocopies (19 pages @ \$.20/page)	<u>3.80</u>
TOTAL		\$1785.80

Search Time

The Ministry indicates that the request was forwarded to the Advanced Life-Support Program (the program area). The program area located the files for each of the seven areas named in the request which might contain records responsive to the request. The Ministry submits that, in total, there are approximately 40 files to be searched in these seven areas, amounting to between 200 to 300 pages per area.

The Ministry indicates that in order to estimate the amount of time it would take to search the 40 files, the Program Manager of the program area reviewed one of the files page by page to determine what documents would be responsive to the appellant's narrowed request. Based on his expert knowledge of the process for reviewing and approving defibrillator programs, the Program Manager estimated the average number of pages in the files for each area and the approximate search time that would be required in reviewing these files for records responsive to the request. On this basis, the Ministry estimates that it will take approximately one hour to search each file. At \$30 per hour, this would total \$1200 for search time.

In her representations, the appellant indicates that she believes that there are only 14 proposals to be located and photocopied and does not understand why it is necessary to review 40 files. Further, she believes that the Ministry should have ready access to computerized files regarding those Basic and Advanced Life Support programs delivered in each area. She does not understand why such information would be difficult to locate.

In response to my queries regarding the extent of its search, the Ministry indicated that the appellant specified in her request that she was seeking the information referred to above for seven separate areas and for a time span of approximately eight years. The Ministry indicates that it does not maintain its files in such a way as to identify that a particular file contains

proposals. Rather, documents are filed by year and are maintained within each file in chronological order. Moreover, such proposals are not required to be submitted to the Ministry in a particular format or length and are not readily identifiable as "proposals". Therefore, it is necessary to review all of the files for the seven areas to ensure a complete and thorough search for records responsive to the request.

In reviewing the Ministry's explanation of the steps taken to search for and locate records responsive to the appellant's request, I am satisfied that in order to locate records responsive to the appellant's request, it will be necessary to search through 40 files. I am also satisfied that the estimated cost of \$1200 charged to her was calculated in accordance with the Act and Regulation.

Photocopies

The Ministry states that it estimates that approximately 1504 pages will be found to be responsive to the request (1485 pages responsive to Parts 1 and 2 and 19 pages responsive to Part 3). At \$0.20 per page, the total photocopying charge will be \$300.80. This includes \$3.80 for copies of the record responsive to Part 3 of the request, which the appellant has withdrawn.

As I indicated above, the appellant does not dispute the charge of \$0.20 per page to photocopy the records. This amount charged for photocopies is in accordance with the fees which the Ministry is entitled to charge for photocopies. The Ministry should reduce the total amount charged to the appellant to reflect the reduction in number of pages as a result of the appellant's withdrawal of Part 3 of the request.

Severing (Preparation time)

The Ministry states that only the proposals and supplements would contain information to be severed. In the breakdown of the fee estimate provided by the Ministry, the Ministry indicates that of the 1485 pages responsive to Parts 1 and 2, the proposals and supplements (Part 1) comprise 1425 pages, and the letters (Part 2) comprise 60 pages. The Ministry indicates that approximately 20% of the 1425 pages (or 285 pages) contain information which would qualify as personal information or third party information, and would therefore be subject to the exemptions in sections 21 and 17(1) of the Act, respectively.

The Ministry calculates that it will take two minutes per page to sever this information, amounting to 9.5 hours at \$30 per hour, for a total of \$285.

Previous orders of this office have allowed a fee of two minutes per page for the preparation of records for disclosure (Orders M-782, M-811 and M-858). I agree that this is a reasonable amount of time, and find that the Ministry is entitled to charge for the 9.5 hours it will take to complete this work, for a fee of \$285.

In summary, I find that the Ministry's fee estimate of \$1785.80 (minus \$3.80 for photocopies regarding Part 3 for a total of \$1782) was calculated in accordance with section 57(1) of the Act 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.

In the correspondence which the appellant has sent to this office and in her representations, the appellant has outlined the history of the provision of funding for semi-automated defibrillators in Ontario, and the apparently inconsistent manner in which the program was carried out. She indicates that at the time her husband suffered a cardiac arrest, the ambulances in her area were not equipped with semi-automated defibrillators.

The appellant states:

Having asked the Ministry for a fee waiver, I feel that the dissemination of these records would disclose that there is a serious flaw in the health care funding process, ie. Exactly what were the reasons for the lack of defibrillators in [the appellant's area] from 1987 up until 1995, when other similar communities who met less of the criteria for funding than [her area] were provided with funding for these life saving devices?

I will deal with the public health and safety issue first. In Order P_474, former Assistant Commissioner Irwin Glasberg found that the following factors are relevant in determining whether dissemination of a record will benefit public health or safety under the section 57(4)(c) of the Act:

1. Whether the subject matter of the record is a matter of public rather than private interest;
2. Whether the subject matter of the record relates directly to a public health or safety issue;

3. Whether the dissemination of the record 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 record.

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

While I agree that the funding of the defibrillator program relates to a public health issue, in my view, the appellant's interest is more of a private one in the circumstances of this appeal. With respect to the probability that the requester will disseminate the contents of the record, the appellant states that "upon receiving these records I plan to present them to the media for the widest possible distribution". In my view, the appellant's plans are very vague and she has not provided any evidence to indicate that anyone in the media is interested in receiving the records or that this action will result in dissemination of the contents of the records. As a result, I am not satisfied that the disclosure of the requested records will benefit public health or safety within the meaning of section 57(4)(c).

I will now deal with the application of section 57(4)(b) of the Act. In her request for a fee waiver, the appellant stated:

... I believe that my children and I have already been penalized emotionally and financially by the untimely death of my husband in a city that was neglected by the [Ministry].

Despite being requested to do so, the appellant did not provide the Ministry with any details of her financial situation. Nor did she provide any information on this issue to the Commissioner's office. On this basis, I have no evidence before me to indicate that the payment of the estimated fee would cause her a financial hardship within the meaning of section 57(4)(b). Therefore, I find that, in the circumstances of this appeal, the appellant has not established that it would be fair and equitable for the fee to be waived on the basis that payment of the fee would cause her a financial hardship.

ORDER:

I uphold the Ministry's revised fee estimate (minus \$3.80 for records no longer required by the appellant) in the amount of \$1782.

Original signed by: _____

May 15, 1997

Laurel Cropley
Inquiry Officer