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

ORDER P-1374

Appeal P_9700028

Ministry of Community and Social Services

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NATURE OF THE APPEAL:

The appellant, a labour organization, submitted a four-part request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of Community and Social Services (the Ministry).

The records mentioned in the four parts of the request may be summarized as follows:

(1) the most recent approved service plans and supporting documentation with respect to four named agencies (which I will refer to throughout this order as "the four agencies") which provide services to the disabled;

(2) the most recent by-laws of the four agencies;

(3) copies of any 1996 correspondence among the four agencies concerning their funding; and

(4) copies of any internal correspondence after September 1, 1996 between Ministry area offices and the Developmental Services Branch naming the four agencies, but excluding correspondence sent by the agencies to the Ministry.

The request was received by the Ministry on December 10, 1996. On January 10, 1997, the Ministry responded with a fee estimate, the particulars of which are as follows:

15.75 hours search time @ $7.50 per fifteen minutes	$472.50
1166 pages to be photocopied @ $0.20 per page	$233.20
TOTAL FEE	**$705.70**

This estimate did not indicate that any exemptions would be claimed.

The appellant paid the fee in full on January 16, 1997. On January 30, having received no records, the appellant filed an appeal based on the Ministry's deemed refusal to provide the information. This ground of appeal appears to be in reference to section 29(4) of the Act.

The appellant also appealed the amount of the fee.

Subsequently, the Ministry issued its final decision letter, disclosing just under 1500 pages of records. Of these, 137 pages represented partial disclosures. An additional 42 pages were fully withheld. The information which was not disclosed was withheld pursuant to the exemptions in sections 17(1) (third party information) and 21(1) (invasion of privacy). This decision letter resolved the "deemed refusal" aspect of this appeal.

Subsequently, the Ministry discovered an additional 90-page record which was disclosed to the appellant on February 17, 1997. Two pages of this record were partially withheld under the section 21(1) exemption.

Since this appeal was not settled in mediation, this office sent a Notice of Inquiry to the appellant and the Ministry. During mediation, the appellant raised the issue of fee waiver, which was therefore included as an issue in the Notice of Inquiry. Both parties submitted representations.

In its representations, the appellant objected to the Ministry's claim that parts of the record are exempt and also stated that, based on its review of the records which were disclosed, additional responsive records should exist. These issues are being dealt with in Appeal P-9700046 and will not be addressed in this order. This order will address the issues of fees and fee waiver only.

DISCUSSION:

FEE ESTIMATE

The charging of fees is authorized by section 57(1) of the Act, which 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.

When it prepared its fee estimate, the Ministry had not actually completed all of its searches. When it provided representations in this inquiry, the Ministry had completed its response to the request, and thus, the Ministry was in a position to supply information about the actual search time required, and the number of pages actually photocopied.

With respect to search time, the Ministry states that it conducted its search in three areas, namely the Toronto area office, the Ottawa office and the Ministry's Communications and Marketing Branch. To locate the responsive pages identified (in all, over 1500 pages) in these three areas, a total of 21.75 hours of staff time was expended on searches. In my view, this is a reasonable time in view of the complexity of the request, and particularly items (3) and (4) as summarized above, and the need to search in three very distinct areas.

Section 6 of Regulation 460 (the Regulation), made under the Act, specifies that the fee required to be charged for search time is $7.50 for each fifteen minutes spent by any person, or $30 per hour. On this basis, the Ministry calculates the fee which it could have charged for search time as $652.50. This exceeds the amount it actually did charge for search time in its estimate,

namely, $472.50. Therefore, I uphold the Ministry's fee for search time in the amount of $472.50.

For photocopies, the Ministry indicates that 1562 photocopies were made, not including additional copies required for severances. However, this appears to include 42 pages which were fully withheld, and in my view, the Ministry is not entitled to charge for photocopying these. This leaves a total of 1520 pages. Section 6 of the Regulation provides for a charge of $0.20 per page for photocopies, and on this basis, the charge for these pages would amount to $304. Again, this exceeds the amount charged by the Ministry in its estimate, namely $233.20. Therefore, I also uphold the Ministry's fee for photocopying, in the amount of $233.20.

The appellant argues that because of delays in processing its request, the information is of reduced utility and the fee should be reduced. It also argues that the request was for service plans and other information which should have been "more publicly available".

Dealing with the first of these two arguments, I note that if the appellant decided that it no longer wished to obtain the information because of the Ministry's delay, it could have withdrawn its request and demanded a refund. It did not do so, but instead continued to press for disclosure. In any event, the Ministry has charged a lower fee than it could have for the information disclosed, as demonstrated by the above analysis. Moreover, the fee provisions of the Act and Regulation are mandatory unless a fee waiver applies. Although there may be cases which would justify a fee reduction because of the way in which an institution handles a request, in my view, this is not such a case.

With regard to the appellant's second argument, previous orders have held that the Act does not require institutions to store their records in a particular way, and that institutions are entitled to charge for the time actually taken to locate responsive records (Orders 31 and M-203).

I uphold the fee of $705.70 charged by the Ministry.

FEE WAIVER

Fee waiver is provided for by section 57(4) of the Act, which states:

> 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,
>
> (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.

Section 8 of Regulation 460 provides as follows:

> 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.
>
> 2. If the amount of a payment would be $5 or less, whether the amount of the payment is too small to justify requiring payment.

Many previous orders have held that the onus is on the appellant to demonstrate that a fee waiver would be justified (e.g. Order P-530).

The appellant has not provided sufficient evidence to bring this request within any of sections 57(4)(a) through (d). In particular, under section 57(4)(a), I note that the cost of processing the request exceeded the amount charged by the institution. Under sections 57(4)(b) and (c), I have not been provided with any specific evidence of financial hardship, nor any potential benefit to public health or safety.

Under the Regulation, the factor in item 1 under section 8 could apply since only partial access was given to 139 pages, and another 42 pages were withheld in full. However, given the level of disclosure which was made, and the fact that the Ministry has charged a lower fee than it could have, my conclusion is that this factor would not justify a waiver.

In my view, the appellant has not satisfied its onus of demonstrating that it is entitled to a fee waiver.

ORDER:

1. I uphold the Ministry's decision to charge a fee of $705.70.

2. The appellant's appeal on the issue of fee waiver is dismissed.

Original signed by: April 2, 1997
John Higgins
Inquiry Officer