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

ORDER P-1378

Appeal P_9600453

Ministry of Natural Resources

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/Téléc: 416-325-9195
TTY: 416-325-7539
http://www.ipc.on.ca

NATURE OF THE APPEAL:

The appellant, who represents a "nonprofit conservation organization", submitted the following four-part request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of Natural Resources (the Ministry):

1. Correspondence between the Ontario government and the Chippewas of Nawash and Saugeen prior to the case that related to the commercial fishing rights of the two bands [a 1993 court ruling known as "the Fairgrieve decision"]. These records were probably signed by Bud Wildman or senior officials from the Ministry of Natural Resources or the Ontario Native Affairs Secretariat and were likely written between January 1990 and June 1993.

2. Any government correspondence, both internal and external, in this same general time period instructing the Crown Attorney in the case to agree at the outset of the case that the bands in question had aboriginal commercial fishing rights and not to argue against these rights or cross-examine the defence on the extent of these rights.

3. Any correspondence, both internal or external, relating to why the Crown did not contest the evidence submitted by the defence and why the Crown did not appeal the decision.

4. Any correspondence, both internal and external, relating to the subpoena of Mr. Wildman by the defence and any agreement made between Mr. Wildman or government officials and the Bands in question, regarding Mr. Wildman's court appearance.

The Ministry responded to this request, advising that it had located 70 records consisting of "public records and media clippings, along with e-mail and letters between government officials and the public". The Ministry granted access to 18 pages of records including records it identified as "media clippings, two letters from religious organizations, and a record which was filed with the Federal Court". The Ministry denied access to the remaining records on the basis of the exemptions in sections 12, 13, 14, 15, 17, 18(1)(g), 19 and 21.

The Ministry indicated further that, in responding to the request, it had spent 6 hours searching for the records at a cost of $180 for search time (6 hours at $7.50 per quarter hour) plus $3.60 for copying costs (18 pages @ $.20 per page), totalling $183.60. The Ministry indicated that the appellant would have to pay the $183.60 fee, before it would release those records to which it had decided to grant access.

The appellant appealed both the denial of access and the fees charged for search time. During mediation, however, the appellant agreed to restrict the issue in this appeal to the fees charged. The Ministry's decision to deny access to the remaining records is, therefore, not at issue in this appeal.

In appealing the fees, the appellant stated that he did not ask for media clippings and letters from religious organizations. Rather, he specifically requested access to copies of government correspondence relating to "the Fairgrieve decision" and Mr. Wildman's subpoena. He believes that the Ministry has misinterpreted his request, and as a result, the search fees are too high.

This office provided a Notice of Inquiry to the Ministry and the appellant. Representations were received from both parties. The issues to be determined in this appeal are whether the records identified by the Ministry are responsive to the request and whether the fees are calculated in accordance with the Act and Regulation.

DISCUSSION:

RESPONSIVE RECORDS

As I noted above, the Ministry identified the responsive records as consisting of "public records and media clippings, along with e-mail and letters between government officials and the public". The Ministry indicated in its decision letter that it was prepared to disclose 18 pages of records to the appellant, upon payment of the fee. According to the Ministry's letter, these records consist of media clippings, two letters from religious organizations, and a record which was filed with the Federal Court.

In his representations, the appellant reiterates that he did not ask for media clippings, public records, or letters from religious organizations.

During the inquiry stage of this appeal, the Ministry indicated that there was an error in its decision letter. In this regard, the Ministry noted that the reference to the "two letters **from** religious organizations" should have read "two letters **to** religious organizations". The Ministry also advised me that subsequent to its original decision, the records were reviewed again and it was determined that more records could be disclosed to the appellant than originally indicated. The Ministry provided a copy of the "responsive records" to this office, including those it had decided to release.

With respect to the appellant's position regarding the scope of the request, the Ministry acknowledges that the wording of the request was very clear. The Ministry submits, however, that the wording of the request was also very broad. In particular, the Ministry indicates that the appellant asked for "any correspondence both internal and external".

In Order P-880, Inquiry Officer Anita Fineberg examined the issues of "relevancy" and "responsiveness" of records. She concluded that:

> While it is admittedly difficult to provide a precise definition of "relevancy" or "responsiveness", I believe that the term describes anything that is reasonably related to the request.

I have reviewed the records. With respect to the majority of them, I am satisfied that they consist of "correspondence" and are reasonably related to the request. Although a small number of the

records identified as responsive may stretch the limits of the request, in my view it is not possible to say that they are not reasonably related to the request.

However, I agree with the appellant that a reasonable interpretation of the request would not have included press releases or media clippings as each part of the request specifically asked for "correspondence". The records to which the appellant has been granted access contain five pages of media clippings and four pages of press releases. These pages should be removed from the responsive records.

Records to be disclosed

As I mentioned above, the Ministry has decided to disclose more records than originally indicated in its decision letter. Once the nine pages referred to above are removed, the records to be disclosed comprise 33 pages and consist of the following:

- "Minister's Request" form with seven pages attached Re: Notice of Appeal
- Correspondence from government sources
- memoranda
- Facsimile transmittal with comments
- Correspondence to the appellant's organization
- "Minister's Request" form with six pages attached, consisting of a letter from the appellant's organization, a draft response to that letter and a Minister's Briefing Note regarding the issues raised in this correspondence.

FEES

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.

Search time

In his representations, the appellant indicates that he did not request access to media clippings, public records or letters from religious organizations. Rather, he states that he requested specific

government correspondence relating to a specific court case and the former Minister's involvement in the case. He argues that the Ministry has spent considerable time searching for documents that are not relevant to the request.

As I indicated above, the Ministry contends that the wording of the request was very broad. In particular, the Ministry indicates that the appellant asked for "any correspondence both internal and external". The Ministry submits that in order to respond comprehensively to this request, a search through **all** records which relate to the court case was necessary. The Ministry states further that a search for records responsive to the request, whether broadly construed or narrowed according to the appellant's position, would have involved a search of the same files. Accordingly, the amount of time expended to search through these files would have been the same.

The Ministry provided affidavits sworn by a secretary in the Native Affairs Unit (the secretary) and the Office Administrator in the Legal Services Branch of the Ministry (the administrator). These two individuals were responsible for processing the appellant's access request.

The secretary indicates that her search through relevant files in that Unit took one hour. She indicates further that she contacted the Native Liaison Officers for the South Central Region and the Midhurst District and requested that they search though their files. Each Liaison Officer expended one hour to search the relevant files in their respective offices. As a result of these three searches, 14 records were located.

The administrator states that a solicitor and a law clerk in the Legal Services Branch searched through two files in that branch. One file consisted of five volumes totalling four inches of correspondence. The second file contained approximately one inch of paper containing correspondence. The administrator indicates that the files are organized in such a manner that the same files would have to be searched regardless of how narrowly the request was interpreted. Collectively, the solicitor and the law clerk spent four hours searching through these files for records responsive to the request.

The administrator also indicates that the Minister's Liaison Officer and Correspondence Control Assistant conducted a search of the computerized correspondence tracking system in the Minister's office. Potentially responsive records were retrieved and sent to the Legal Services Branch for final determination of responsiveness. This portion of the search took approximately one and a half hours to complete.

Collectively, the amount of time taken to search for responsive records was 8.5 hours.

The administrator affirms that the search time does not include the time taken to review the records for possible exemptions.

I am satisfied that the request, whether interpreted narrowly or broadly, required the same search through the files. Accordingly, I find that any discrepancy between the Ministry's and the appellant's views as to the responsiveness of the records which were located does not impact on the amount of time expended to search for records responsive to the request.

With respect to the amount of time required to search through the Ministry's files for responsive records, I am satisfied that it was a reasonable time given the number of distinct areas that needed to be searched and the size of the files.

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 actual fee which the Ministry could have charged for search time is $255 (8.5 hours @ $30 per hour). This exceeds the amount it actually did charge for search time, namely, $180. Therefore, I uphold the Ministry's fee for search time in the amount of $180.

Photocopying

As I indicated above, the Ministry has charged $3.60 for photocopying 18 pages of records at $0.20 per page. Section 6 of the Regulation provides for a charge of $0.20 per page for photocopies, and on this basis, I uphold the Ministry's decision to charge this per page amount.

I have found that nine pages of press releases and media clippings are not responsive to the request, which reduces the number of pages to nine. However, the Ministry has identified an additional 24 pages which it is prepared to release to the appellant. The cost of photocopying these pages amounts to $4.80, although the Ministry indicates that it does not intend to amend the fee for photocopying to reflect the additional pages. In the circumstances, I find that a charge of $3.60 to photocopy 33 pages of records is not unreasonable, and I uphold this amount.

ORDER:

I uphold the Ministry's decision to charge the appellant a fee of $183.60.

Original signed by: April 21, 1997
Laurel Cropley
Inquiry Officer