



Information and Privacy
Commissioner/Ontario

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

ORDER P-1479

Appeal P_9700216

Ministry of Health



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NATURE OF THE APPEAL:

The Ministry of Health (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to information relating to ancillary student health care fees at the University of Western Ontario and a named sports medicine clinic. The Ministry located 55 responsive records in its Legal Services Branch and a further 965 pages of documents in its Provider Services Branch. The requester was provided with an interim decision which advised that a number of exemptions in the Act may apply to the responsive records. The interim decision provided that, upon payment of a fee of \$88.10 for the Legal Services Branch records, and a fee estimate of \$1,024.98 for the Provider Services Branch records, partial access to them would be granted.

The requester paid the requested fee for the Legal Services Branch records. He then asked the Ministry to waive both this fee and that requested for the Provider Services Branch records. The Ministry decided not to grant the fee waivers.

The requester, now the appellant, appealed the Ministry's decision not to grant a fee waiver, as well as the amount of the fees which the Ministry claimed for "severing time" in its original decision letter with respect to the Legal Services and Provider Services Branch records.

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

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.

Section 6 of Regulation 460 also deals with fees. It states, in part, as follows:

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.

As noted above, the Ministry's fee estimate involves searching files in the Legal Services and Provider Services Branches, and is broken down as follows:

Legal Services Branch

Search time of 30 minutes @ \$7.50 per 1/4 hour	..	..	\$15.00
Photocopies of 178 pages @ \$0.20 per page	..	..	\$35.60
Severing (2 min. per page x 38 pages) @ \$7.50 per 1/4 hour	..	..	\$37.50
TOTAL FEE	=		\$88.10
			=====

Provider Services Branch

Search time of 120 minutes @ \$7.50 per 1/4 hour	..	..	\$60.00
Photocopies of 965 pages @ \$0.20 per page	..	..	\$193.60
Severing (2 min. per page x 772 pages) @ \$7.50 per 1/4 hour	..	..	\$771.98
TOTAL FEE ESTIMATE	=		\$1,024.98
			=====

The appellant is only disputing the amount claimed in both the fee and the fee estimate for the time required to sever the responsive records. The Ministry submits that the Provider Services Branch estimates that approximately 80% of the responsive records, or 772 out of 965 pages, contain information which would require severing. Further, the Ministry argues that 38 pages of

records held by its Legal Services Branch would require severing. It submits that it has been the Ministry's practice to use the standard of two minutes per page for the severing exercise and relies on a number of decisions of this office which have upheld the use of that formula.

I have reviewed the submissions of the parties in this respect and I find that the Ministry's use of the formula of two minutes per page to prepare those records which require severing is reasonable. If however, the actual number of pages held by the Provider Services Branch which require severing or the actual time required to perform the severing of the records is different from that contained in the estimate, the fee is to be adjusted accordingly. Accordingly, I uphold the fee and the fee estimate provided by the Ministry with respect to the records held by its Legal Services and Provider Services Branches.

FEE WAIVER

The provisions of the Act relating to fee waiver are found in section 57(4), which states as follows:

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 the dissemination of the record will benefit public health or safety; and
- (d) any other matter prescribed in the regulations.

It has been established in 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 M-429 and M-914). 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 submits that the fee in this case ought to be waived because the dissemination of the information in the records will benefit public health.

In Order P-474, former Assistant Commissioner Irwin Glasberg found that the appropriate standard of review for decisions under section 57(4) 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 her delegates to review the correctness of that decision.

As noted above, the appellant submits that it would be fair and equitable for the Ministry to grant a waiver of payment of all costs related to his request because the dissemination of the records will benefit public health. He argues that the records requested contain information about issues surrounding universal access to health care by students at the University of Western Ontario. He further submits that the records relate to questions pertaining to accessibility to the health care services provided to students by the named clinic.

The appellant indicates his interest in disseminating to the community the information contained in the records, and has provided some evidence of his previous experience in garnering the attention of the media with respect to this issue.

The Ministry points out that the access regime set forth in the Act operates on a user-pay principle and that fees should be waived in limited and specific cases where they meet the criteria in section 57(4). The Ministry submits that the dissemination of the information contained in the records would not benefit the public in general, but rather “a specific and minimal fraction of the public” only. It argues that the dissemination of information concerning student health care facilities, while pertinent to some individuals, is not beneficial to the public at large.

The Ministry then goes on to argue that while the appellant’s concerns about the future of Medicare in Canada may be real, he has not demonstrated how the dissemination of the information contained in the responsive records would serve to “benefit that issue.” In summary, the Ministry submits that the appellant has failed to provide evidence linking the information which is the subject of the request to a public health benefit.

In Order P-474 referred to above, former Assistant Commissioner Glasberg found that the following factors are relevant in determining whether the dissemination of a record will benefit public health or safety under section 57(4)(c):

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.

Based on my review of the submissions of the parties, I am of the view that the subject matter of the records sought by the appellant in this request is a matter of public, rather than a private, interest. I further find that the "public" contemplated by the appellant is sufficiently broadly-based to include the student population not only of the University of Western Ontario, but all Ontario colleges and universities. I find that this interest is, therefore, a public one within the meaning of section 57(4) and that this is a relevant consideration in determining whether the dissemination of these records will benefit public health or safety.

I cannot, however, agree with the position taken by the appellant with respect to the relevance of the subject matter of the records themselves to an issue of public health. The appellant has, obviously, not been given access to all of the documents. In my view, he is sufficiently aware of their nature, however, to understand whether their disclosure and dissemination would yield a public benefit by disclosing a public health or safety concern or by contributing meaningfully to the development of an important public health or safety issue.

While I agree that issues relating to continued universal access to health care are issues about public health, I cannot agree that the dissemination of the information contained in these records will disclose a public health concern or contribute meaningfully to the public's understanding of this issue. In my view, the Ministry is correct in asserting that the appellant has not successfully established how an issue relating to public health, such as accessibility, will be enhanced by the disclosure of the information contained in these records.

For these reasons, I find that the appellant has not provided sufficient evidence to justify his request for a fee waiver. Accordingly, I uphold the Ministry's decision not to waive the fee and the appellant's request for a fee waiver is denied.

ORDER:

I uphold the Ministry's decision with respect to the amount of the fee and fee estimate for severing time and dismiss the appellant's request for a fee waiver.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ October 31, 1997