



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

ORDER P-1465

Appeal P_9700058

Ministry of Health



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NATURE OF THE APPEAL:

The appellant made an eight-part request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of Health (the Ministry). The request was for access to a number of different documents relating to doctor's billing practises reviewed by the Medical Review Committee (MRC) and the Ontario Health Insurance Plan (OHIP), including:

- copies of any or all memoranda, policies, procedures and/or protocols developed by or in the possession of the Manager, Monitoring and Control, Provider Services Branch or any of his predecessors (Part 7 of the request); and
- copies of any internal memoranda, policies, procedures, protocols, manuals of operation or guidelines relating to analysis review, investigation and/or processing of claims for insured services by the Provider Services Branch (Part 8 of the request).

The Ministry issued an interim decision authorizing disclosure of records responsive to Parts 7 and 8 of the request with severances pursuant to the exemptions contained in sections 13, 14, 18, 19 and 21 of the Act. The interim decision was accompanied by a fee estimate in the amount of \$22,513.

The appellant appealed the fee estimate.

This office sent a Notice of Inquiry to the Ministry and the appellant. 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.

The Ministry's fee estimate involves searching both paper and electronic files, and is broken down as follows:

Search time of 349 hours 20 minutes @ \$7.50 per 1/4 hour =	\$10,479.00
Photocopies of 15,170 pages @ \$0.20 per page =	\$ 3,034.00
Severing (2 min. per page x 9000 pages) @ \$7.50 per 1/4 hour =	\$ 9,000.00
TOTAL FEE ESTIMATE	\$ 22,513.00

The Ministry advises that all e-mails and paper files of the Manager, Monitoring and Control, Provider Services Branch (PSB), would have to be searched in order to respond to the request, particularly as Parts 7 and 8 of the request are very general in nature and not specific to any one issue. The Ministry submits that the fee estimate issued to the appellant conforms to the schedule of fees in section 6 of Regulation 460 and that, furthermore, the fee estimate accurately reflects the cost of searching and preparing records for disclosure. The Ministry contends that the appellant is seeking access to a significant amount of information and that considerable time must be expended to conduct the labor-intensive search required to locate the information. So that the fee estimate would truly reflect the work involved, the Ministry contacted the Manager, the most experienced staff person on the issue. He subsequently advised that in order to locate

records responsive to these parts of the request as framed by the appellant, a search of all of his files would be required as the area he is responsible for is "monitoring and control."

SEARCH

Paper files

Search time for these files is estimated at 16 hours. The Ministry submits that, in terms of the paper files, the following will need to be searched and severed:

PAPER FILES (Manager's Office): two five-drawer filing cabinets of files, of which at least seven full drawers contain files relating to the specific material requested, and more than 30 binders of materials that also relate to the requested information.

PAPER FILES (Monitoring and Control): six cabinets containing the files on all referrals to the Medical and Practitioner Review Committees and the referrals for criminal investigation of fraud.

PAPER FILES (Provider Services Branch): The PSB Central Filing has 28 five-drawer filing cabinets. The primary function of the branch is the administration and management of the OHIP transfer payment, the payment of fee-for-service providers under the Health Insurance Act. The memoranda, correspondence (internal and external), policies, procedures and protocols filed there, for the most part, concern that overall branch function of which the monitoring and control function is one component. There is no specific cabinet designated to monitoring and control and, moreover, it is not easy to draw a distinct line between it and other branch functions, since, in many respects, all the functions of the various sections of the branch are a continuum. It is likely that many of the documents authored or addressed by the present Manager's predecessor will be found in that filing system.

In addition to those files located in the branch Central File, other branch documents will have to be provided, including the Provider Manual, OHIP Medical Rules, Schedule of Benefits and OHIP Bulletins.

In total, therefore, the Ministry estimates that 16 hours will be spent searching through approximately 36 five-drawer filing cabinets and 30 binders for information responsive to the request. This translates into about five minutes per file drawer, which in my view is reasonable for the purposes of an estimate. At a rate of \$30 per hour, I uphold the Ministry's estimate in regard to this aspect of the search in the amount of \$480.

Electronic files

Search time for this activity is estimated at 333 hours, 20 minutes, or approximately 46 working days (over nine weeks). The Ministry submits that:

E-MAIL: The Manager claims to have logged more than 36,000 e-mail memorandums, of which approximately 2/3 he says have been filed into some 300 different designated subject folders in his system. He estimates that as much as 90% of those folders are related directly or indirectly to monitoring and control. In addition to those files, policy communications on specific Schedule of Benefits fee codes are filed in separate folders, and internal communication on individual fee codes takes place on a daily basis. As well, he has an electronic record of the reviews and individual information of literally hundreds of physicians and practitioners in the same system. He claims that since some of these files contain policy discussions and decisions that would be unique to the provider in question, those files would need to be searched also.

I have difficulty understanding how the Ministry can estimate that it can locate responsive records contained in an entire file drawer of paper in just over 5 minutes, but in the same space of time would only be able to search through 60 electronic files, averaging two pages each. The Ministry also has not provided me with submissions regarding the applicability of electronic search tools, such as "sort" and "find" widely available in common office software programs, which would likely significantly decrease the amount of search time required.

In my view, the Ministry's estimate of one minute per two page electronic memorandum is excessive. I find that such even without the commonly available electronic search tools, it is reasonable to expect that an experienced employee would be able to scan approximately six two_page electronic messages for responsive information in one minute. Accordingly, I adjust the Ministry's calculations in this respect as follows:

20,000 messages @ 6 per minute = 55.5 hours @ \$30 per hour = \$1665

PREPARATION

I find that the Ministry's estimate of 2 minutes per page to prepare the records requiring severance for disclosure is reasonable. In addition, the Ministry's estimate of \$9,000 for preparing 9000 pages of records for disclosure is calculated in accordance with item 4 of section 6 of the Regulation, and I therefore uphold it. If, however, the number of pages severed differs from the estimate, the fee is to be adjusted accordingly.

PHOTOCOPYING

The Ministry's estimate of \$3,034 for photocopying 15,170 pages of records is calculated in accordance with item 1 of section 6 of the Regulation, and I therefore uphold it. If, however, the number of copies differs from the estimate, the fee is to be adjusted accordingly. In this regard, I encourage the parties to cooperate to determine whether there is any way to reduce the number of copies required. I note, in particular, that the Ministry estimates full access will be granted to 6170 pages of records, which I assume include the Claims Assessment Manual, the Claims Submission Manual, the OHIP Medical Rules, Divisional Communications, Schedule of Benefits, OHIP Bulletins and the Monitoring and Control Procedure Manual. It would perhaps be more cost effective for the Ministry and the appellant to arrange visual access to these records as opposed to the provision of photocopies.

ORDER:

I order the Ministry to adjust its fee estimate as follows:

Search time, paper files, 16 hours @ \$30 per hour =	\$ 480.00
Search time, electronic files, 55.5 hours @ \$30 per hour =	\$ 1,665.00
Photocopying, 15,170 pages @ \$.20 per page =	\$ 3,034.00
Preparing record for disclosure, 300 hours @ \$30 per hour =	\$ 9,000.00
TOTAL ESTIMATED FEE	\$14,179.00

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ October 9, 1997