



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER P-1557**

**Appeal P-9700179**

**Ministry of the Environment**



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## **NATURE OF THE APPEAL:**

The appellant, a non-profit organization, made five requests under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of the Environment (the Ministry). The five requests were identical in nature, but were submitted individually to each of the Ministry's five regions. The requests were for access to a list of municipal and industrial air and water dischargers in each region which were in non-compliance with a Control Order or Certificate of Approval Limits or regulatory limits for the period January 1, 1996 to May 2, 1997. The appellant also sought access to the discharge records for each of the dischargers that were not in compliance during that period. At the time of the requests, the appellant asked for a fee waiver.

The Ministry informed the appellant that it collects and produces this information in a waste dischargers report on an annual basis. However, the report respecting the time period in the request had not yet been produced. Accordingly, access could be provided to raw data only.

The Ministry provided the appellant with a fee estimate of \$11,900 for the records regarding the industrial facilities, and \$7,447.20 for the records regarding the municipal facilities, for a total of \$19,347.20. The Ministry denied the appellant's request for a fee waiver stating that "a public interest in accessing raw data has not been demonstrated, especially in light of the fact that the Ministry will produce a report summarizing the information in the near future."

The appellant appealed the Ministry's decision not to grant a fee waiver. The appellant also indicated that the response was inadequate as it did not address his request for air emission information.

During mediation of the appeal, discussions continued between the appellant and the Ministry. The appellant narrowed the scope of the request and the Ministry provided a revised fee estimate of \$19,868 for records relating to both air and water discharges. The Ministry confirmed its decision not to waive fees, stating that there was "no public interest in a list of all polluters across the province including the actual raw data supporting the non-compliance."

This office sent a Notice of Inquiry to the Ministry and the appellant. Representations were received from both parties. Discussions between the Ministry and the appellant continued subsequent to the Notice of Inquiry, and the Ministry again revised its fee. The revised cost for processing the request is \$2170 respecting air dischargers, \$5031 respecting water dischargers and \$120 for shipping. The total revised fee is \$7,321.

## **DISCUSSION:**

### **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.

The appellant has requested a fee waiver on the grounds that the payment of the fee will cause financial hardship to it, that dissemination of the records will benefit public health and safety, and that it would be fair and equitable to waive the fee.

Many previous orders have held that the onus is on the appellant to demonstrate that a fee waiver would be justified.

The appellant has not provided me with any information about the financial resources available to it. Accordingly, I find that I have not been provided with sufficient evidence of financial hardship that warrants shifting the financial burden from the appellant to the government and ultimately to the public.

In Order P-474, referred to above, 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 section 57(4)(c) of the Act:

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.

The Ministry argues that, while there may be local public interest in a few of the industries or municipalities that are not in compliance, the Ministry is not aware that there is a public interest

at large in the requested information. The Ministry indicates that even if all the records were to be disclosed, only a few may represent a public health or safety concern, in which case the Ministry would be actively pursuing such incidents through the use of its compliance guidelines. Further, the Ministry states that disclosure would not contribute to a meaningful discussion of the issues related to the discharges of any one location as it would not represent a balanced picture, because the appellant has not requested access to the numerous other records outlining the steps taken to date to address the compliance problems.

The appellant submits that the request seeks to identify those industries and municipalities that are polluting illegally, and to obtain the information indicating the amount of toxins that these facilities are emitting into the air and water. The appellant intends to publicize this information in order to permit the public to identify which corporations and industries are threatening its health and safety by polluting the environment, and to permit the public to take remedial measures including boycotts and civil litigation. The appellant states that the information will also permit the public to review how diligent the Ministry is in enforcing the law and protecting the health of the citizens.

I am satisfied that the issues surrounding non-complying air and water discharges are of public interest, relating directly to a public health issue. I am also satisfied that dissemination of this information would contribute meaningfully to the development of an understanding of the issues relating to air and water discharges, and the ability of the public to have input into an important public health issue. Finally, I believe it to be likely that the appellant would disseminate the contents of the records.

However, I must go on to consider whether it would be fair or equitable for the fee to be waived in this particular case.

Previous orders have set out a number of factors to be considered to determine whether a denial of a fee waiver is "fair and equitable". These factors are listed and considered below.

**1. The manner in which the Ministry attempted to respond to the appellant's request**

The appellant submits that the Ministry has not been diligent in attempting to respond to the request. It points out flaws in both the Ministry's first and second fee estimates, and argues that the reasons given for denying the fee waiver were inadequate.

**2. Whether the Ministry worked with the appellant to narrow and/or clarify the request**

The Ministry acknowledges that the appellant has worked with the Ministry to narrow the scope of the request, but indicates that it has not limited the request significantly. The request would still involve every one of the Ministry's 20 district offices, approximately 5-10 Environmental Officers for each of the 20 districts and require a significant number of hours.

The appellant argues that the Ministry has not worked with the appellant to clarify the request, rather it has only consulted with the appellant to correct its own misunderstanding.

**3. Whether the Ministry provided any documentation to the appellant free of charge**

The Ministry points out that it has provided the appellant with information responsive to other requests free of charge, while the appellant points out that the Ministry has not provided any of the information responsive to this request free of charge.

**4. Whether the appellant worked constructively with the Ministry to narrow the scope of the request**

The appellant submits that it has worked constructively with the Ministry, clarifying misunderstandings and offering compromise solutions to reduce the cost of the request.

**5. Whether the request involves a large number of records**

The appellant acknowledges that the request involves a significant number of records. The Ministry's estimate indicates that the water documents will total 4,650 pages and the air documents will total 9,375 pages.

**6. Whether or not the appellant has advanced a compromise solution which would reduce costs**

The appellant indicates that it has advanced a number of possible solutions that would reduce the cost of the request. The appellant had initially agreed to wait until the time when the Non-Compliance Report respecting water discharges would be published, however the Ministry failed to release the report at the promised time. The appellant also suggested that rather than examine each air emission file, the Ministry simply consult with its district managers and examine only those files considered likely to contain air monitoring. Finally, the appellant has indicated that it is prepared to review the documents before taking copies, likely requiring copies of only a portion of the documents.

**7. Whether the waiver of the fee would shift an unreasonable burden of the cost from the appellant to the Ministry**

The appellant argues that the request would not shift an unreasonable burden to the Ministry because the obligation to prepare and compile the requested information lies at the very heart of the Ministry's responsibilities. The appellant submits that the Ministry's fundamental task is to regulate pollution in the province, and the request is simply for a list of those companies which are not in compliance with air emission and water discharge laws and for the data supporting that finding of non-compliance. The appellant indicates that providing this information to the public does not shift a burden onto the Ministry, it merely requires the Ministry to be open so that the public can appreciate the extent of the threats to its health and what measures are being taken to control those threats.

In considering the representations of the parties and the nature of the information at issue in this appeal, I find that the waiver of the search and preparation fees in this case would not shift an unreasonable burden of the cost from the appellant to the Ministry. In coming to this conclusion, I am sensitive to the concerns raised by the Ministry, however I note the Ministry's intent to

compile the water data and produce a summary, the relationship of the requested information to its central mandate, and its obligations surrounding keeping the public informed about public health and safety issues.

Accordingly, I order the Ministry to waive the search and preparation charges in the circumstances of this appeal. I uphold the Ministry's decision not to waive any photocopying and shipping costs.

**ORDER:**

1. I order the Ministry to waive the search and preparation charges associated with the appellant's request.
2. I uphold the Ministry's decision not to waive the photocopying and shipping charges.

Original signed by: \_\_\_\_\_  
Holly Big Canoe  
Inquiry Officer

\_\_\_\_\_ April 27, 1998