



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

# ORDER PO-1647

Appeal PA-980181-1

Ministry of Finance



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## **NATURE OF THE APPEAL:**

The appellant submitted a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of Finance (the Ministry). The request was for access to all information relating to the Ministry's compliance with Orders and/or recommendations from: (1) the Information and Privacy Commissioner's office; (2) the Ombudsman, and (3) the Assessment Review Board, as well as records relating to the appellant's property assessment complaints.

The Ministry issued an initial decision on June 4, 1998. In this decision, the Ministry provided the appellant with a fee estimate of \$120 pursuant to section 57(1) of the Act.

The Ministry issued a second decision on July 9, 1998. In this decision, the Ministry advised the appellant that it had divided his request into 26 parts. It indicated further that following extensive searches, it was unable to locate records responsive to parts 2, 3, 4, 5, 6, 8 - 10, 13 - 18 and 20 - 26 of the request. The Ministry advised the appellant that parts 7 and 11 could not be interpreted as requests for information and declined to issue a decision with respect to them. The Ministry requested clarification regarding part 12 of the request and indicated that responsive records were located for parts 1 and 19. The Ministry indicated that it intended to grant access to these records upon payment of the required fees.

The Ministry then provided the appellant with a revised fee estimate which was broken down as follows:

Search costs		
3 hours @ \$30 per hour		\$ 90.00
Preparation of record		
.25 hours @ \$30 per hour		7.50
Reproduction costs		
2 photocopies @ \$0.20 per page		<u>0.40</u>
<b>TOTAL COST</b>		<b>\$97.90</b>

The appellant appealed the Ministry's decision on the basis that the search costs were excessive.

This office provided a Notice of Inquiry to the appellant and the Ministry. Representations were received from both parties. The sole issue in this appeal is whether the fees were calculated in accordance with the fee provisions of the Act.

## **DISCUSSION:**

### **FEES**

The charging of fees is authorized in section 57(1) of the Act, and more specific provisions regarding fees are found in section 6 of R.R.O. 1990, Regulation 460.

Sections 57(1) and (6) of the Act state:

- (1) 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.
- (6) The fees provided in this section shall be paid and distributed in the manner and at the times prescribed in the regulations.

Sections 6 and 6.1 of R.R.O. 1990, Regulation 460 state:

6. 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.
- 6.1 The following are the fees that shall be charged for the purposes of subsection 57(1) of the Act for access to personal information about the individual making the request for access:
    1. For photocopies and computer printouts, 20 cents per page.
    2. For floppy disks, \$10 for each disk.
    3. For developing a computer program or other method of producing the personal information requested from machine readable record, \$15 for each 15 minutes spent by any person.
    4. The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the personal information requested if those costs are specified in an invoice that the institution has received.

### **Search costs**

In determining whether the Ministry's charges for search time are in accordance with the Act, I must first determine whether the appellant's request is for general records, for his own personal information, or for both. This is because the regulation under the Act makes a distinction between the costs which are allowed to be charged when a request is for general records or when it is for the requester's personal information.

In reviewing the request as originally stated by the appellant and as interpreted by the Ministry, I find that only the portion of the request which pertains to the appellant's property assessment complaints relates to a request for his personal information. The calculation of the fees relating to this part of the request should have been done under section 6.1 of the Regulation. The remaining parts of the request all concern requests for general records and the calculation for these parts of the request should have been done under section 6 of the Regulation.

The Ministry does not make any distinction in providing its estimate to the appellant or in its representations on this issue. I note, however, in the breakdown provided in its representations, the Ministry indicates that one person spent one hour reviewing the appellant's assessment file in order to locate his complaints relating to his property assessment. Because this search relates to the appellant's request for personal information, the Ministry cannot include the charge for this one hour of search time in its final calculation.

With respect to the remaining parts of the appellant's request, the Ministry indicates that the request contained a number of enumerated items which were mixed in with editorial comment. It indicates that a

considerable amount of time was taken simply in an effort to understand the request and determine what files should be searched in order to respond to it.

The Ministry indicates that, collectively, one or more of its staff spent a total of 14 hours in determining what records to look for and where they might be located, as well as conducting the actual searches. The Ministry indicates that searches for responsive records were conducted in five locations.

I am satisfied that the Ministry's calculation for search time was reasonable and calculated in accordance with the provisions of the Act and regulation. I should also point out that although the Ministry actually spent 14 hours searching for responsive records, it only charged the appellant for three hours of time spent. In my view, even taking into account that a portion of the request was for the appellant's personal information, the amount charged should be upheld on appeal.

### **Preparation time**

The Ministry charged the appellant \$7.50 for preparation, however, it did not address this charge in its representations. It is not clear what might have been required in order to prepare the record for disclosure and in its decision letter, the Ministry does not indicate that any exemptions would apply to the records which it intends to disclose. Therefore, there should not be any time spent on severing the records. In the absence of any representations on this aspect of the fees I cannot conclude that this charge was calculated in accordance with the Act. Therefore, I do not uphold the fees charged for preparation.

### **Photocopying**

The Ministry charged the appellant \$0.40 for photocopying two pages of records calculated at \$0.20 per page. As indicated above, section 1 of Regulation 6 and 6.1 both permit the charging of fees for photocopying at \$0.20 per page. Therefore, I find that the Ministry's calculation for this aspect of the fees was done in accordance with the Act and regulation and should be upheld.

In conclusion, I find that the Ministry is entitled to charge the appellant for three hours of search time at a cost of \$90, and \$0.40 for photocopying, for a total of \$90.40.

### **ORDER:**

1. I do not uphold the Ministry's fees of \$97.90.

2. I allow the Ministry to charge the appellant \$90.40 for search time and photocopying.

Original signed by: \_\_\_\_\_

\_\_\_\_\_ December 22, 1998

Laurel Cropley

Adjudicator