



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER PO-1774**

**Appeals PA-990344-1 and PA-990365-1 to PA-990371-1, Inclusive**

**Ontario Hydro**



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## **NATURE OF THE APPEAL:**

The appellant made eight requests to Ontario Hydro (now represented by Ontario Power Generating Inc. [the OPG] ) under the Freedom of Information and Protection of Privacy Act (the Act). The appellant's requests are delineated as follows:

1. (Appeal PA-990344-1, Hydro file 7199): Please provide all documents prepared for, and motions and decisions made by the Ontario Hydro Board of Directors for the period September 1, 1997 to March 31, 1999 regarding the 'Nuclear Asset Optimization Plan' and the 'Integrated Improvement Program'.
2. (Appeal PA-990365-1, Hydro file 3999): Please provide the following information regarding nuclear fuel waste (high level radioactive waste) management and disposal for the period January 1, 1997 to March 31, 1999: 1. - All correspondence between Ontario Hydro and Natural Resources Canada or Atomic Energy of Canada Limited (AECL); 2. - all correspondence between Ontario Hydro and any municipal or regional governments in Canada; any provincial governments in Canada; or any First Nations in Canada; and 3. - documents prepared for the Ontario Hydro Board of Directors and any motions or decisions made by the Board.
3. (Appeal PA-990366-1, Hydro file 4299): Please provide the following information regarding nuclear emergency planning or nuclear emergence response around Ontario Hydro's nuclear power stations for the period January 1, 1994 to March 31, 1999: 1. - all correspondence between Ontario Hydro and the Province of Ontario or any municipal or regional government in Ontario; 2. - all documents prepared for the Ontario Hydro Board of Directors and any motions or decisions made by the Board; and 3. - all studies made by, or for Ontario Hydro not included in the above items.
4. (Appeal PA-990367-1, Hydro file 4599): Re: Tritium production, sales and exports – Please provide the following information regarding Ontario Hydro's production and sales of tritium produced at the Tritium Recovery Facility at the Darlington Nuclear Generating Station site for the period January 1, 1987 to March 31, 1999: 1. - Ontario Hydro's policy regarding any restrictions on the sale of tritium; 2. - The total amount of tritium gas extracted in each calendar year; 3. - All correspondence (including documents or applications filed) with the Province of Ontario, or the Government of Canada; 4. - The amount of tritium sold in each calendar year; the total purchase value of the tritium sold in each year; the companies or institutions to which tritium was sold and the amount of tritium they purchased; the sector to which it was sold (i.e., pharmaceutical, fusion, government, etc.); the proposed use, by sector, of the tritium that was sold; and regarding the export of tritium, a list of countries to which tritium was shipped in each calendar year.
5. (Appeal PA-990368-1, Hydro file 4999): Re: Fire Protection at CANDU nuclear stations in Ontario - please provide the following items regarding fire hazard assessment and fire protection measures at CANDU nuclear stations in Ontario for the period January 1, 1997 to March 31, 1999: 1. - a copy of correspondence between Ontario Hydro and the Ontario Fire Marshall's

- office, or the Province of Ontario; 2. - a copy of correspondence between Ontario Hydro and any municipal or regional government in Ontario; 3. - a copy of all correspondence between Ontario Hydro and the Atomic Energy Control Board; and 4. - a copy of all documents prepared for the Ontario Hydro Board of Directors and motions and decisions made by the Board.
6. (Appeal PA-990369-1, Hydro file 5399): Re: Earthquake hazards and nuclear safety - please provide the following information for the period January 1, 1990 to March 31, 1999 regarding the issue of the risk that earthquakes may damage nuclear stations located in Ontario; 1. - all correspondence between Ontario Hydro and the Geological Survey of Canada; 2. - the rationale for the limited modelling conducted on the Pressure Relief Duct at the Pickering Nuclear Generating Station with respect to vulnerability to earthquake damage; and 3. - all documents prepared for the Ontario Hydro Board of Directors and motions and decisions made by the Board.
  7. (Appeal PA-990370-1, Hydro file 6499): 1. - please provide all documents prepared for the Ontario Hydro Board of Directors, and motions or decisions made by the Board, for the period November 1, 1998 to March 31, 1999 regarding the proposed restart of the Pickering A Nuclear Generating Station; 2. - please provide a copy of all documents prepared for the Ontario Hydro Board of Directors, and motions or decisions made by the Board, for the period January 1, 1991 to March 31, 1999 regarding the proposed rehabilitation, subsequent shutdown, and current restart proposal for the Bruce A Nuclear Generating Station.
  8. (Appeal PA-990371-1, Hydro file 6799): Re: Mixed Oxide fuel use in Ontario Hydro's reactors: 1. - please provide a copy of all documents prepared for the Ontario Hydro Board of Directors, and motions or decisions made by the Board, for the period April 1, 1993 to March 31, 1999 regarding the proposed use in Ontario Hydro's reactors of mixed oxide nuclear fuel containing plutonium from dismantled nuclear warheads obtained from the U.S. and Russian Federation; 2. - please provide an outline of Ontario Hydro's current and planned activities regarding this initiative, including any participation in studies, expressions of interest or actual bids involving research, production, testing or use of mixed oxide fuel.

In response to each of the requests, OPG provided the appellant with an interim decision on access and a fee estimate to cover the cost of processing each request. OPG's response to each individual request is outlined as follows:

1. OPG issued an interim decision on access and indicated that a fee estimate for the amount of \$1,224.00 had been assessed for the processing of the request.
2. OPG issued an interim decision on access and indicated that a fee estimate for the amount of \$22,070.00 had been assessed for the processing of the request.
3. OPG issued an interim decision on access and indicated that a fee estimate for the amount of \$16,700.00 had been assessed for the processing of the request.

4. OPG issued an interim decision on access and indicated that a fee estimate for the amount of \$710.00 had been assessed for the processing of part 3 of the request and a fee estimate in the amount of \$2, 310.00 had been assessed for the processing of part 4 of the request. (It should be noted that while OPG's fee for part 3 of the request was \$710.00, the breakdown of \$690.00 for search time, \$30.00 for preparation time and \$10.00 for photocopying totals the amount of \$730.00.)
5. OPG issued an interim decision on access and indicated that a fee estimate for the amount of \$2,160.00 had been assessed for the processing of the request.
6. OPG issued an interim decision on access and indicated that a fee estimate for the amount of \$894.00 had been assessed for the processing of the request.
7. OPG issued an interim decision on access and indicated that a fee estimate for the amount of \$2, 470.00 had been assessed for the processing of the request.
8. OPG issued an interim decision on access and indicated that a fee estimate for the amount of \$1, 830.00 had been assessed for the processing of the request.

The appellant appealed OPG's fee estimates and also requested that it consider granting a fee waiver for each of the requests under section 57(4)(c) of the Act. OPG denied the appellant's request for a fee waiver on the basis that:

1. the requests pertain to a large number of records and meeting the requests would significantly interfere with its operations;
2. the cost of meeting the requests is expected to be greater than the amounts OPG is entitled to charge under the Act, particularly as third parties will require notification;
3. much of the information requested is already publicly available; accordingly, it is not clear that the requested information would contribute directly and meaningfully to **the** understanding of key public health and safety issues;
4. OPG invited the appellant to meet in an attempt to find a compromise solution that would meet the appellant's needs but OPG has received no response to this **suggestion**

The appellant also appealed OPG's decision not to grant a fee waiver. I initially provided a Notice of Inquiry to the OPG seeking its representations on the issues of the appropriateness of the fee estimate which it provided to the appellant and its decision not to grant the appellant a fee waiver. I received detailed submissions from OPG, which were shared in their entirety with the appellant. The appellant also made representations on the issues raised in the Notice of Inquiry.

**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 the Regulation 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.  
...
- 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.  
...

For each of the eight requests which comprise this appeal, OPG has provided an extremely detailed breakdown of the calculation of the estimated fees applicable. Along with tables setting out the manner in which the fees were estimated, OPG has provided six memoranda from staff persons responsible for locating the records responsive to each request. These memoranda explain clearly the nature and extent of the searches required for records responsive to the requests, an estimate of the time required to prepare the

records for disclosure and the photocopying charges with an allowance for those records which will be exempt in their entirety.

In some cases, the estimates were based on a representative sample of the records and the costs associated with processing the request were extrapolated to arrive at the fee estimate provided. In other cases, the responsive records themselves were located and the fee estimate represents the actual cost of the search; an estimate of the preparation time was made and the actual photocopying charges were calculated. As six of the requests dealt with material prepared for the Ontario Hydro Board of Directors, the fee estimate includes the cost of performing one search for records responsive to all six of these requests, rather than the cost of performing six individual searches.

OPG estimated that it would take seven hours to locate a single year's worth of records responsive to these six requests and it allocated 1.17 hours as search time for each year of records. OPG also indicates that in some cases, more than one individual was involved in locating the responsive records. The time undertaken by each of these individuals is included in the calculations of search time.

It must be noted that the requests as framed are very broad in nature and, in some cases, span many years. The appellant acknowledges that the requests, which were filed just prior to March 31, 1999, were the final opportunity for requesters to obtain information from the former Ontario Hydro prior to its transformation into OPG and other entities upon passage of the Electricity Act, 1998 which took effect on that date. After March 31, 1999, requests under the Act to OPG or the other successors to Ontario Hydro are no longer possible, including those pertaining to nuclear power generation issues. For this reason, the appellant concedes that in order to obtain as much information as possible prior to the termination of access rights to OPG's records, it was necessary to submit a number of broadly-worded requests.

The appellant disputes the amount of the fee estimates generally, taking the position that they do not correspond to the scope of the requests, which she suggests were highly specific. The appellant also questions whether the time required for searches of material circulated to the Ontario Hydro Board of Directors is reasonable as these documents ought to be readily accessible and in a consolidated form. Similarly, the appellant argues that the correspondence which forms the basis for several of the requests should also be compiled in some consolidated form.

The estimates which were provided in OPG's representations were generally lower than those initially provided to the appellant in its original decision letters. OPG has also reduced the fee for search time in each of the eight requests by \$60 on the basis that the appellant is entitled to two hours of free search time for each request. The provisions of the Act mandating two hours of free search time in certain circumstances were repealed in the 1996 amendments to the Act. As the fee provisions in section 57(1) **require** that institutions charge the fees set forth therein, the fee estimates provided should not include this reduction. I will outline each of the requests below and evaluate the appropriateness of the fee estimates calculated by OPG for each individually.

**Appeal Number PA-990344-1 (Request 7199)**

[IPC Order PO-1774/April 10, 2000]

The request in this appeal was for “all documents prepared for, and motions and decisions made by the Ontario Hydro Board of Directors for the period September 1, 1997 to March 31, 1999 regarding the ‘Nuclear Asset Optimization Plan’ and the ‘Integrated Improvement Program’.” OPG indicates that the time required to locate and then identify the records responsive to this request is three hours, with a search fee of \$30 (\$90 less two hours of free search time). As noted above, the appellant is no longer entitled to two hours of free search time and the full amount of \$90 is required.

Because many of these records contain commercially sensitive information which would be subject to the exemptions in sections 18(1)(a), (c) and (d) of the Act, an additional seven hours would be required for severing for a total of \$210. This was based on a representative sample of the 2,450 pages of records. Photocopying charges for 2,450 pages were \$490 (at \$.20 per page). The total fee for processing this request is, accordingly, \$790.

Based on the detailed and complete information provided to me in the memorandum of the individual who conducted the search and estimated the cost of preparing the records for disclosure, I uphold the full amount of the fee estimate of \$790 for this request.

#### **Appeal Number PA-990365-1 (Request 3999)**

In this appeal, the request was for information regarding nuclear fuel waste (high level radioactive waste) management and disposal for the period January 1, 1997 to March 31, 1999: 1. - All correspondence between Ontario Hydro and Natural Resources Canada or Atomic Energy of Canada Limited (AECL); 2. - all correspondence between Ontario Hydro and any municipal or regional governments in Canada; any provincial governments in Canada; or any First Nations in Canada; and 3. - documents prepared for the Ontario Hydro Board of Directors and any motions or decisions made by the Board.

OPG submits that it would require nine hours of search time (at a cost of \$270) to locate the records responsive to the first two parts of this request, based on a representative sampling of the files where this information is stored. A further 33 hours would be required to prepare the records for disclosure as much of the information would fall within the exemptions in sections 17(1) and 18(1)(a), (c) and (d) of the Act, for a total of \$990. The records responsive to the first two parts of this request total an estimated 13,050 pages. Photocopying charges would, accordingly, be \$2,610.50.

In response to the third part of this request, OPG estimates that it would require 1.17 hours x 2.25 years of records for a total of \$78.98. A further fee of \$5.52 would be required to prepare the records, estimated to consist of eight pages per year. Photocopying fees for 2.25 years of records (at eight pages per year) are \$3.60.

The total fee estimate for this request is, accordingly, \$3,958.20. Based on my review of the memoranda filed by the individuals who conducted these searches and the information which they provided with respect to the time required to locate and sever the responsive documents, I uphold OPG’s fee estimate with respect to this request.

**Appeal Number PA-990366-1 (Request 4299)**

The request in this appeal was for information regarding nuclear emergency planning or nuclear emergency response around Ontario Hydro's nuclear power stations for the period January 1, 1994 to March 31, 1999: 1. - all correspondence between Ontario Hydro and the Province of Ontario or any municipal or regional government in Ontario; 2. - all documents prepared for the Ontario Hydro Board of Directors and any motions or decisions made by the Board; and 3. - all studies made by, or for Ontario Hydro not included in the above items.

In support of its fee estimate respecting this request, OPG provided two memoranda from former Ontario Hydro staff who conducted searches at the Bruce Nuclear Facility and Ontario Hydro's former head office for records responsive to the request. In addition, the materials relating to the Ontario Hydro Board of Directors were also located as part of the search undertaken at head office.

The searches pertaining to the first part of the request were extensive and required a total of 155 hours, for a total of \$4,650. The records to be searched at head office were located in the central filing system, a departmental file area and seven personal office filing systems. Based on a review of the filing systems indices, the individual who conducted the search estimated that some 700 documents were responsive to the request. Based on a representative sample, he estimated that these records amounted to approximately 2.5 linear feet of paper, or 7,500 pages. He estimated that 10% of those records would require some severance prior to disclosure as they contain information which is exempt under sections 17(1) and 18(1)(a), (c) and (d). This exercise was estimated to take 31 hours to complete, based on a review of 15 seconds per page, costing a total of \$930. Photocopying charges for 7,500 pages is \$1,500.

The searches conducted at the Bruce plant involved 100 hours at five geographically dispersed sites within the facility. As there was no index of files, a representative sample of some 10% of the records which were possibly responsive were searched. The individual who conducted the search indicates that for records dating from 1997, the individual file holdings of six different staff persons had to be searched. He also indicates that, based on his review of the representative sample, it would take 100 hours to locate the estimated 25,000 pages of responsive records. OPG has chosen not to give a fee estimate for the cost of preparing these records for disclosure but has submitted a fee estimate for photocopying of 24,960 pages of records of \$4,938.

The fee estimate for search time, photocopying and preparation of the records responsive to this request which are located in the records of the Ontario Hydro Board of Directors was \$205.26.

The total claimed as a fee estimate for records responsive to this request is, accordingly, \$11,853.26. I have reviewed in detail the submissions of OPG and its employees with respect to the searches which it has undertaken for these records and find it to be reasonable. The records responsive to this request are voluminous and located in a number of different places within the OPG's head office and its Bruce Nuclear Facility, including personal files maintained by individuals which are not compiled with an index. The



searches required to locate these records would be complex and time consuming. Accordingly, I uphold OPG's fee estimate with respect to this aspect of the appeal.

**Appeal Number PA-990367-1 (Request 4599)**

This request was for information regarding Ontario Hydro's production and sales of tritium produced at the Tritium Recovery Facility at the Darlington Nuclear Generating Station site for the period January 1, 1987 to March 31, 1999: 1. - Ontario Hydro's policy regarding any restrictions on the sale of tritium; 2. - The total amount of tritium gas extracted in each calendar year; 3. - All correspondence (including documents or applications filed) with the Province of Ontario, or the Government of Canada; 4. - The amount of tritium sold in each calendar year; the total purchase value of the tritium sold in each year; the companies or institutions to which tritium was sold and the amount of tritium they purchased; the sector to which it was sold (i.e., pharmaceutical, fusion, government, etc.); the proposed use, by sector, of the tritium that was sold; and regarding the export of tritium, a list of countries to which tritium was shipped in each calendar year.

OPG has made submissions with respect to its fee estimate in relation to Parts 3 and 4 of this request. As the request covers a period of over 12 years, the search for records necessitated a great deal of work. Again, much of the information contained in the responsive records was found to be exempt under sections 17(1) and 18(1)(a), (c) and (d) of the Act. The files containing these records were located in two filing systems organized by an index and occupy nine filing cabinets. Based on a representative sample of these documents, the individual conducting this search concluded that 83 hours of search time would be required to locate the estimated 5775 pages comprising the specific documents requested. In addition, she found that over ninety percent of the responsive records would be subject to the exemptions noted above. Taking thirty seconds to sever each page, she estimated it would take over 48 hours to complete the preparation of the records. Photocopying charges of \$115.40 would then be incurred in copying 577 pages. OPG submits that "[G]iven the format and similarity in the nature of the information [in] the records the copy costs indicated below [\$115.40] are based on only ten percent of the total 5775 pages." The total fee estimate for this request is, accordingly, \$4045.40.

I find that the search time estimated by OPG is reasonable in light of the vast number of records to be examined. Insofar as the preparation time and photocopying charges are concerned, I cannot agree that it would be necessary to sever 5,775 pages of documents when only 10% of that number will ultimately be disclosed. I find that a fee of \$144 representing 4.8 hours of preparation time for the 577 pages which are to be disclosed, in part, is reasonable. In addition, I will uphold the fee estimate of \$115.40 to cover the cost of photocopying the 577 pages of responsive records. The total fee for this request is, accordingly, \$2749.40.

**Appeal Number PA-990368-1 (Request 4999)**

The request in this appeal was for the following items regarding fire hazard assessment and fire protection measures at CANDU nuclear stations in Ontario for the period January 1, 1997 to March 31, 1999: 1. - a  
[IPC Order PO-1774/April 10, 2000]

copy of correspondence between Ontario Hydro and the Ontario Fire Marshall's office, or the Province of Ontario; 2. - a copy of correspondence between Ontario Hydro and any municipal or regional government in Ontario; 3. - a copy of all correspondence between Ontario Hydro and the Atomic Energy Control Board; and 4. - a copy of all documents prepared for the Ontario Hydro Board of Directors and motions and decisions made by the Board.

The memoranda provided by the OPG staff who conducted the searches for records responsive to this request indicate that the records were located both at Ontario Hydro's head office and at the Bruce Nuclear Facility. The head office records are filed by both subject matter and chronologically and consist of some 40 files totalling 6.7 linear feet or some 20,000 pages. Based on a representative sample, the individual who conducted the search indicates that approximately 10% of these records contain information which is responsive to the request and that he would require seven hours to locate them, for a total of \$210. In addition, of the 2000 pages of responsive records, some 200 pages would require severing as they contain commercially sensitive material. This exercise would take 11.1 hours, at a cost of \$333, according to the OPG staff person. Photocopying charges for the 2000 pages of records would entail a cost of \$400. The total fee for the head office records responsive to this request is, accordingly, \$943.

The responsive records found at the Bruce Nuclear Facility are maintained in three separate locations and are filed along with some 30 linear feet of material. The responsive information is filed chronologically by subject and there is no index of the files available. Based on a representative sample, the individual who conducted the search indicates that 10% of the material in these files is responsive to the request, that it would take 18 hours to review them and that approximately 1,100 pages would be responsive. No estimate was provided as to the fee chargeable for severing these records. The photocopying charges are \$220 (1100 pages X \$.20 per page). The total fee for the Bruce records responsive to this request is \$760.

Additional information from the Ontario Hydro Board of Directors responsive to this request is also described in the material filed by OPG and totals \$88.20. This represents a pro rata share of the search time for the Board materials for this request only.

The information provided to me by OPG is detailed and explains clearly and cogently the nature and extent of the searches necessary to locate the information which is responsive to this request. I am also satisfied that the calculation of the preparation of the head office records is an accurate estimate of the actual time which this exercise would require. The photocopying expenses are also in keeping with the provisions of the Act. Accordingly, I uphold OPG's fee estimate of \$1,791.20 for this request in its entirety.

### **Appeal Number PA-990369-1 (Request 5399)**

This request was for information for the period January 1, 1990 to March 31, 1999 regarding the issue of the risk that earthquakes may damage nuclear stations located in Ontario; 1. - all correspondence between Ontario Hydro and the Geological Survey of Canada; 2. - the rationale for the limited modelling conducted on the Pressure Relief Duct at the Pickering Nuclear Generating Station with respect to vulnerability to

earthquake damage; and 3. - all documents prepared for the Ontario Hydro Board of Directors and motions and decisions made by the Board.

OPG indicates that because this request covers a period of 9.25 years, it would require a more lengthy and detailed search of its Ontario Hydro Board of Directors files. These files consist of approximately one inch of Meeting Minutes and 11 inches of supporting material per year. Only a small portion of these records contain information which is responsive to this particular request, however. In completing its calculations, OPG assigned a pro rata share of the search time for all of the Board files dating back to January 1, 1990 to each request. The share for this request was 1.7 hours X 9.25 years X \$30 per hour for a total of \$324.68. An additional amount of \$22.20 for severing and \$14.80 for photocopying was also allocated to this request for a total of \$361.68.

Based on my review of the material filed by OPG regarding the steps necessary for the search to be undertaken, I find these amounts to be reasonable and I uphold its fee estimate with respect to this request.

**Appeal Number PA-990370-1 (Request 6499)**

This request was for all documents prepared for the Ontario Hydro Board of Directors, and motions or decisions made by the Board, for the period November 1, 1998 to March 31, 1999 regarding the proposed restart of the Pickering A Nuclear Generating Station; 2. - please provide a copy of all documents prepared for the Ontario Hydro Board of Directors, and motions or decisions made by the Board, for the period January 1, 1991 to March 31, 1999 regarding the proposed rehabilitation, subsequent shutdown, and current restart proposal for the Bruce A Nuclear Generating Station.

A similar calculation to that in Request 5399 was made with respect to the search of Ontario Hydro Board of Directors minutes and supporting materials responsive to this request. The share for this request was \$304.32 for search time, \$20.81 for time spent preparing the record for disclosure and \$13.87 for photocopying for a total of \$339.

I find these amounts to be reasonable and I uphold the fee estimate given by OPG for this request.

**Appeal Number PA-990371-1 (Request 6799)**

This request was in relation to Ontario Hydro's use of "mixed fuel." Specifically, the appellant is seeking access to records relating to Mixed Oxide fuel use in Ontario Hydro's reactors: 1. - please provide a copy of all documents prepared for the Ontario Hydro Board of Directors, and motions or decisions made by the Board, for the period April 1, 1993 to March 31, 1999 regarding the proposed use in Ontario Hydro's reactors of mixed oxide nuclear fuel containing plutonium from dismantled nuclear warheads obtained from the U.S. and Russian Federation; 2. - please provide an outline of Ontario Hydro's current and planned activities regarding this initiative, including any participation in studies, expressions of interest or actual bids involving research, production, testing or use of mixed oxide fuel.

Again, the formula employed in OPG's calculation of the fee estimate for Requests 5799 and 6499 was used in arriving at the appropriate fee for the search of the Ontario Hydro Board of Directors Meeting Minutes and supporting materials. This calculation allocated a portion of the search time of these records to records responsive to this particular request. OPG estimates the fee for search time to be \$219.36, for preparation of the records \$15.00 and photocopying charges of \$10.00 for a total of \$244.38.

Again, I find this amount to be a reasonable allocation of the search and preparation time necessary to locate and prepare the records responsive to this request. I uphold this fee estimate in its entirety.

By way of summary, I uphold a fee estimate for all of these appeals in the amount of \$22,087.12.

### **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.

Section 8 of Regulation 460 provides as follows:

The following are prescribed as matters for a head to consider in deciding whether to waive all or part of a payment required to be made under the Act:

1. Whether the person requesting access to the record is given access to it.
2. If the amount of a payment would be \$5 or less, whether the amount of the payment is too small to justify requiring payment.

Many previous orders have held that the onus is on the appellant to demonstrate that a fee waiver would be justified. [for example, Orders 31, M-166, M-429, M-598, M-914, MO-1285, P-474 and P-1484]

The majority of the appellant's submissions both at the request/appeal and the inquiry stages of these appeals revolve around the issue of the appropriateness of OPG's decision not to grant her a fee waiver. Generally, the appellant argues that:

[O]n principle, there should be no fees applied to the requested information due to the fact that the requested materials relate directly to furthering public access to information regarding the hazards to human health and the environment posed by the nuclear stations.

The appellant represents a non-profit non-governmental organization which she submits works to protect the public interest. The organization has no full-time staff and maintains an annual budget of less than \$50,000. The appellant indicates that the organization's role in the community is to bring specific nuclear hazard issues forward for discussion at meetings of the Pickering/Ontario Power Generation Liaison Committee of which its local affiliate is a member.

The appellant has made specific representations about the relationship between the requested information and health and safety and environmental protection issues which are addressed therein. I will address each of these individually.

Conversely, OPG has also made extensive submissions in support of its decision not to grant the appellant a fee waiver. It points out that it makes available to the public a wide-ranging variety of information which addresses the concerns raised by the appellant. OPG has also made extensive representations on the steps which it, and its predecessor Ontario Hydro, have taken to publicly disseminate information about the issues raised by the appellant in each of her appeals. In addition, OPG submits that its nuclear programs are strictly regulated by the federal Atomic Energy Control Board (the AECB) which also widely disseminates information relating to the kinds of issues raised by the appellant's requests. This is accomplished through public disclosure of information and through the public hearings conducted by the AECB.

### **Financial Hardship**

Beyond indicating that the annual budget of the organization which she represents is less than \$50,000, the appellant did not make any submissions in support of an argument that the payment of the fee estimate provided by OPG would cause the organization or herself financial hardship. OPG also indicates that it received nothing from the appellant to substantiate a decision to waive the fee on the basis of financial hardship.

Accordingly, in my view, the appellant's entitlement to a fee waiver under section 57(4)(b) has not been substantiated, and the appellant is not entitled to a fee waiver on the basis of financial hardship.

### **Public Interest**

The main arguments put forward by the appellant, as described above, relate to her contention that it is fair and equitable to waive the fee in the present circumstances because dissemination of the information contained in the records will benefit public health and safety, as contemplated by section 57(4)(c). In support of this contention, the appellant has made representations concerning the public health or safety concerns raised by each of the eight requests.

In Order P-474, former Assistant Commissioner Irwin Glasberg reviewed the principles which govern requests for a fee waiver where the public interest has been raised. He stated that:

In interpreting the scope of section 57(4)(c) of the Act, upon whose wording this appeal will turn, the comments contained in the report prepared by The Williams Commission entitled Public Government for Private People are instructive. It should be noted that this report formed the foundation of Ontario's Freedom of Information and Protection of Privacy Act. With respect to fee waivers, the Report comments at page 270 that:

... we have concluded that the statute should explicitly provide for waiver or reduction of fees when provision of the information can be considered as primarily benefiting the general public. Criteria for the exercise of this discretion should include the size of the public to be benefited, the significance of the benefit, the private interest of the requester which the disclosure may further, the usefulness of the material to be released, and the likelihood that a tangible public good will be realized.

Section 57(4)(c) of the Act was also considered by former Commissioner Sidney B. Linden in Order 2. There, he stated that:

In this case, the relevant criterion for waiver of fees contained in subsection 57(3)(c) [now 57(4)(c)] is whether or not dissemination of the record will "benefit public health or safety." While there is no definition of that term, in my view, it does not mean that fees will be waived where a record simply contains some information relating to health or safety matters ... The institution submits that the appellant must show some "causal connection" between the dissemination of the record and any substantive benefit to "public health or safety." In most cases this would be difficult for an appellant to do, even where, as in this case, the appellant has viewed the record.

The United States Department of Justice has issued guidelines to federal agencies in the United States on how to process fee waiver requests. These guidelines suggest that a waiver is appropriate among other

considerations, “if the information released **meaningfully contributes to public development or understanding of the subject.**”

If the information is only of marginal value in informing the public, then the public benefit is diminished accordingly.” (Common Cause v. IRS, 1 GDSP 79188 (D.D.C. 1979); Shaw v. CIA 3 GDSP. 183, 009 (D.D.C. 1982). (Emphasis added).

I adopt the comments of Commissioner Linden for the purposes of this appeal.

Drawing both from the Williams Commission report and Order 2, I believe 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 record is a matter of public rather than private interest;
2. Whether the subject matter of the record relates directly to a public health or safety issue;
3. Whether the dissemination of the record 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;
4. The probability that the requester will disseminate the contents of the record.

I adopt the comments of the former Assistant Commissioner for the purposes of the present appeals. In considering the factors listed above to the information which is the subject of these appeals, I find that the subject matter of the responsive records is a matter of public, rather than private interest. In addition, I find that issues relating to the safety of nuclear facilities and the disposal of nuclear waste which are at the root of each of these requests relate directly to a public health or safety concern. Without having reviewed the voluminous records responsive to each of the requests, it is difficult for me to determine whether their disclosure would yield a public benefit by disclosing a public health or safety concern. The records may, or may not, contain information about a public health or safety risk. This is precisely the reason for the appellant’s requests.

I agree with the position taken by the appellant, however, that the dissemination of the record would yield a public benefit by contributing meaningfully to the development of understanding of an important public health or safety issue. In my view, issues relating to nuclear safety are, by their very nature, important public health or safety concerns. In Order P-1190, which was upheld by the Ontario Superior Court of Justice [IPC Order PO-1774/April 10, 2000]

(Divisional Court) in Ontario Hydro v. Ontario (Information and Privacy Commissioner), [1996] O.J. No. 4636 (Div. Ct.), leave to appeal refused [1997] O.J. No. 694 (C.A.), Assistant Commissioner Tom Mitchinson adopted the findings of former Commissioner Tom Wright in Order P-270 with respect to the public interest which exists in information relating to the safety of Ontario's nuclear industry. He determined that:

Commissioner Tom Wright discussed the issue of nuclear safety and section 23 in Order P-270. This appeal involved a request for agendas and minutes of the Senior Ontario Hydro/Atomic Energy of Canada Limited Technical Information Committee (SOATIC), which were denied by Hydro under section 17(1) of the Act. In considering whether there was a compelling public interest in disclosure of nuclear safety related information, he stated:

In my view, there is a need for all members of the public to know that any safety issues related to the use of nuclear energy which may exist are being properly addressed by the institution [Hydro] and others involved in the nuclear industry. This is in no way to suggest that the institution is not properly carrying out its mandate in this area. In this appeal, disclosure of the information could have the effect of providing assurances to the public that the institution and others are aware of safety related issues and that action is being taken. In the case of nuclear energy, perhaps unlike any other area, the potential consequences of inaction are enormous.

I believe that the institution, with the assistance and participation of others, has been entrusted with the task of protecting the safety of all members of the public. Accordingly, certain information, almost by its very nature, should generally be publicly available.

In view of the above, it is my opinion that there is a compelling public interest in the disclosure of nuclear safety related information.

Similarly, I adopt the findings of the former Commissioner and the Assistant Commissioner and agree that matters relating to the safety of Ontario's nuclear industry, by their very nature, raise a public safety concern. In addition, I find that the disclosure of the information contained in the records would be reasonably likely to result in the dissemination of information relating to nuclear safety by the organization represented by the appellant. This in turn would lead to a greater public understanding of this important public issue.

It is clear from the material provided to me by both the appellant and OPG that there exists an atmosphere of suspicion and uncertainty with respect to concerns about nuclear safety raised by organizations like that represented by the appellant and the former Ontario Hydro. The dissemination of the information contained in the responsive records could very well result in a public which is better informed about the steps taken by



OPG and its predecessor to ensure public safety and may go some distance in alleviating the concerns raised by environmental organizations.

I conclude therefore, that the dissemination of the information contained in the records which are responsive to the appellant's request will benefit public health or safety within the meaning of section 57(4)(c) of the Act.

### **Is It "Fair and Equitable" to Waive the Fee?**

However, the Act requires that I also make a determination as to whether it is "fair and equitable" to waive the fee. In this regard, OPG submits that it would not be "fair and equitable" to waive the fees in the circumstances of these appeals. It argues that the actual costs involved in processing each of these requests (with responsive records located in 19 different locations within the Corporation) and notifying potential affected parties would far exceed the fee estimate which it has provided. OPG also indicates that the appellant has not cooperated in any meaningful way in reducing the scope of these requests and thereby reducing the cost to it which is reflected in the fee estimate provided. Finally, OPG suggests that processing these requests, as now framed, would significantly interfere with its operations.

Another significant factor which I must consider in determining whether it is fair and equitable to waive the fee in the present circumstances is the timing and the broad nature of the requests as submitted by the appellant. Under the terms of the Electricity Act, 1998, after March 31, 1999, Ontario Hydro and its successor companies are no longer categorized as institutions under the Act. Accordingly, requests made after that date do not fall under the provisions of the Act. Just prior to that date and in order to avoid having the requests fall outside the scope of the Act, the appellant submitted the eight requests which form the basis for these appeals to Ontario Hydro. The requests are extremely broad in scope and, as is evidenced by the enormous number of records which are responsive to them, involve many aspects of the operations of the former Ontario Hydro.

I note that in some of the requests, documents dating back to January 1, 1990 are sought. I am also concerned with the lack of cooperation exhibited by the appellant in "scaling back" or focussing the scope of these requests once it became evident that the records responsive to them were voluminous. In my view, the appellant has not acted responsibly by limiting the scope of the requests to more current information or narrowing the focus of the requests to the information which is important to her organization, rather than taking the "shotgun" approach which was followed throughout the processing of these requests and the subsequent appeals.

Taking into account the unreasonable position adopted by the appellant in these appeals and the enormous number of records which OPG has located which are responsive to the requests, I find that it would not be fair and equitable in the present circumstances to waive the fees under section 57(4). I find that it would be unreasonable to place the entire burden of processing these voluminous and complex requests onto OPG.

**ORDER:**

1. I uphold the OPG's fee estimate of \$22,087.12.
2. I uphold the OPG's decision not to grant the appellant a fee waiver in these appeals.

Original signed by: \_\_\_\_\_  
Donald Hale  
Adjudicator

\_\_\_\_\_ April 10, 2000