



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-1945

Appeal PA-000185-1

Collège des Grands Lac



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

This is an appeal from a decision of the College des Grands Lacs (the College), made under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The requester, now the appellant, sought access to the following records:

1. a copy of the financial reports by KPMG of Sudbury for the years 1995-96, 1996-97 and 1999-2000 with their individual report;
2. the distinct financial reports of KPMG for 1997-1998 and 1998-1999;
3. a copy of 3 statements drafted by two members of the consulting committee filed with the administrative council of the college April 1999;
4. a copy of the subcontracting contracts accorded to individuals and expert consulting firms from 1995 to the present;
5. a copy of the submissions for subcontracting contracts;
6. a copy of the offers for the subcontracting contracts given to individuals and expert consulting firms from 1995 to the present;
7. a copy of all the bills or legal fees for the College from 1995 to the present;
8. the meeting minutes for the administrative council of the College from 1995 to the present;
9. the annual budgets for the College from 1995 to the present.

The College decided to grant access to Records 1, 2, 6, 8, and 9 and provided a fee estimate of \$1,772.20. The College requested a 50% deposit from the appellant and stated its intention to release the records on receipt of the deposit. However, as the appellant has not made a payment, he has not received any records. The College refused to grant the appellant a fee waiver.

The College denied access to Record 3 relying on the exemption in section 13(1) of the *Act* (advice to government), Records 4 and 5 relying on section 17 (third party information), and Record 7 relying on solicitor-client privilege in section 19.

The appellant appealed the College's decision on access, fee estimate and denial of a fee waiver.

A Notice of Inquiry setting out the facts and issues in this appeal was initially sent to the College on the issues of access and the fee estimate. Prior to the College sending in representations, a new Notice of Inquiry, which included only the issues of the fee estimate and fee waiver, was sent to the College. This Notice did not include the issue of access since the College had provided an interim and not a final decision on access and it was therefore premature to seek representations on this issue. The College provided representations that were sent to the appellant together with the new Notice. The appellant also provided submissions.

In its representations, the College revised its fee estimate to \$3,574.20. The only change was in the number of hours required to search for Record 6, the invitations to tender. This amount had increased from \$1,500 to \$3,300.

DISCUSSION:

PREPARING A FEE ESTIMATE IN ACCORDANCE WITH ORDER 81

Order 81 and other orders of this office set out the procedure for a head of an institution to follow where the record being requested is unduly expensive to produce for inspection, either because of the size of the record, the number of records, or their physical location.

In this appeal, the head provided a fee estimate and an interim decision on access. The purpose of the interim access decision is to provide the requester with an indication of whether access to the record will be given once the fees are paid and to give the requester sufficient information to make an informed decision regarding payment of fees.

FEE ESTIMATE

The College's current fee estimate is broken down as follows:

Record	Number of Pages	Photocopy Costs (\$0.20 per page)	Search Costs (\$30 per hour)	Total
1: Financial reports (3)	19 pg x 3 = 57	\$ 11.40	0	\$ 11.40
2: Separate financial repts (7)	4 pg x 7 = 28	\$ 5.60	0	\$ 5.60
6: Invitations to tender (approx. 50)	10 pg x 50 = 500	\$ 100.00	110 boxes = \$3,300.00	\$ 3,400.00
8: Minutes of meetings (67)	8 pg x 67 = 536	\$ 107.20	0	\$ 107.20
9: Annual budgets (5)	50 pg x 5 = 250	\$ 50.00	0	\$ 50.00
TOTALS	1,371	\$ 274.20	\$3,300.00	\$ 3,574.20

The charging of a fee 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 states:

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 College has charged for search time only for Record 6. The search time allocated to this record is the major cost component in the fee estimate (\$3,300.00).

In its representations, the College indicates that it has five campuses in Ontario: Windsor, Welland, Penetanguishene, Hamilton and Toronto. Each campus issues its own tender documents and therefore the search for relevant documents must include each campus. Since a complete record search for tender documents would be unduly expensive to produce for inspection, the College has provided an estimate of the fees that will be charged. The College has chosen to take a representative sample of the record in lieu of inspecting all the records. The College indicates that:

[The manager] went through the boxes at the Toronto campus that contain every invitation to tender issued by that campus since 1995. As a manager, my duties include the negotiation of subcontracts; I therefore understand the nature of invitations to tender.

As the boxes also contain other kinds of documents, I had to examine each document in each box. We estimate that there are about sixty boxes at the Toronto campus and about fifty at the other campuses, which makes a total of 110 boxes that might contain invitations to tender issued since the College opened. I went through two boxes as a representative sample; this effort took me 120 minutes. At thirty dollars an hour in [re]search costs, this come to a total of \$3,300.00

In an attempt to reduce the appellant's expenses, the College offered to allow him access to the documents prior to photocopying. The appellant can then review the records before incurring photocopying costs. The appellant agreed to this arrangement.

The College's estimate of \$274.20 for photocopying 1,371 pages is calculated in accordance with item 1 of section 6 of the Regulation and I therefore uphold it. However, given the agreement between the parties with respect to access to the records, the number of copies actually photocopied may differ from the estimate. The College must adjust the fee accordingly.

The results of its representative sample indicate that the College would require one hour to search each box. To find all 50 records or 500 pages will take 110 hours at a cost of \$6.60 per page.

It is possible that the search for records might take one hour per box for the first few boxes, but as the search progresses, it is reasonable to expect that the time required would decrease. With each successive box, the individual conducting the search will become more familiar with the type of document sought, and arguably more efficient at searching. As well, tender documents are fairly readily identifiable, partly because of their size and specific character of their contents, and would be easier to find than say "any document signed by a named individual".

Accordingly, I do not uphold the search cost for Record 6. I find that a reasonable search time is 30 minutes per box for the first 30 boxes, 20 minutes per box for the next 40 boxes, and 15 minutes per box for the last 40 boxes. The total number of hours allowable for the search is therefore 38.3 hours. At an hourly rate of \$30, this portion of the fee estimate is \$1,149.00

The appellant in his representations narrowed the scope of his Record 6 request to include only "services funded by the DRCH [Human Resources and Development Canada] in Toronto, Penetanguishene and Windsor". Based on this change, the search time for this part of the request may differ from the estimate and the College must adjust its fee accordingly.

In summary, I uphold a fee of \$1,423.20 (\$274.20 for photocopying and \$1,149 for search time), subject to any adjustments the College may be required to make.

FEE WAIVER

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

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 the Regulation then prescribes, in part:

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.
- ...

In the present case, the College has decided to disclose Records 1, 2, 6, 8, and 9.

Under section 57(5), an appellant has the right to ask the Commissioner to review an institution's decision not to waive the fee. The Commissioner may then either confirm or overturn this decision based on a consideration of the criteria set out in section 57(4) of the *Act* (Order P-474).

Many previous orders have held that the onus is on the appellant to demonstrate that a fee waiver would be justified. (Orders M-429, M-598 and M-914). I am also conscious 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 he is entitled to a fee waiver on the basis of financial hardship and "public interest", but provides no evidence in support.

In its representations, the College submits that the appellant is a journalist for a named television station and the cost of this request will be paid by that public institution and not by the individual appellant. As a result, in the absence of representations from the appellant, I find that the payment of the fee estimate will not cause the appellant financial hardship.

The College also states, "Disclosure of the documents would have no positive effect on public health or safety". The documents to be disclosed include financial reports, budgets, invitations to tender and minutes of the College's administrative council meetings. I am satisfied that the nature of the issues raised in these records is likely to be financial, commercial, and political and less likely to relate to public health or safety. Since the appellant has not provided any evidence to explain what "public interest" may be served by release of these records, I find that the appellant is not entitled to a fee waiver on the basis of benefit to public health or safety.

ORDER:

1. I uphold a fee estimate in the amount of \$1,423.20, subject to any necessary adjustments.
2. I uphold the College's decision to deny a fee waiver.

Original signed by: _____
Dawn Maruno
Adjudicator

September 12, 2001 _____