ORDER PO-2214

Appeal PA-030102-1

Public Guardian and Trustee

NATURE OF THE APPEAL:

This is an appeal from an interim decision of the Public Guardian and Trustee (PGT), made under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The requester (now the appellant) sought access to

> a list of all Computer Parameters/Fields (regardless as to whether they are believed to be Extractable or Non-Extractable) that exist in the PGT computer database, together with a detailed definition of their meaning and function.

The PGT issued a two-part interim decision containing a fee estimate. The first part of the decision addressed the list of database fields. The PGT distinguished between a list of database fields covering all fields in the database, and one covering only those database fields relating to the estates program. The fee for generating all database fields was estimated at $2,760.00 while the fee for generating only database fields relating to the estates program was estimated at $1,656.00. The PGT requested a deposit of not less than 50% of the total fee estimate before continuing to process the request.

The second part of the decision addressed the detailed definition of the meaning and function of the database fields. The PGT advised that they would provide a fee estimate for this part of the request once the fee estimate for Part 1 is accepted and payment received. The PGT also advised that they do not have records that provide descriptions of all of the fields and that some information would have to be retrieved manually as it is combined with other records and cannot be automatically generated.

The PGT advised that, whether the broader list or narrower list was chosen by the appellant, it intended to deny access to all responsive records on the basis of the discretionary exemption in section 18 (economic and other interests of a government).

The appellant appealed from the interim decision of the PGT. He advised that he wishes to pursue access to the list of all database fields. As the PGT's decision is an interim one only and not a final decision on access, the application of section 18 is not an issue in the appeal. The only issue before me is the fee estimate of $2,760.00 for generating the list of all database fields.

DISCUSSION:

FEE ESTIMATE:

Section 57(1) requires an institution to charge fees for requests under the *Act*. That section reads:

> 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.

More specific provisions regarding fees are found in sections 6, 7 and 9 of Regulation 460. Those sections read:

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.

....

7.   (1) If a head gives a person an estimate of an amount payable under the Act and the estimate is $100 or more, the head may require the person to pay a deposit equal to 50 per cent of the estimate before the head takes any further steps to respond to the request.

(2) A head shall refund any amount paid under Subsection (1) that is subsequently waived.

9.   If a person is required to pay a fee for access to a record, the head may require the person to do so before giving the person access to the record.

Representations

The PGT states that there are approximately 1900 computer fields in its primary database.

The PGT submits that its fee estimate was prepared from information provided by its computer consultant, who is the person most familiar with the primary database. This consultant has been employed as a systems analyst at the PGT for the past nine years and has investigated, designed and written technical specifications for changes to the primary database in 1995 and 1996. The PGT describes this consultant's other involvement in the design and testing of PGT's computer programs, including the writing of programs to generate lists of information from the primary database to respond to access requests under the *Act*.

The PGT describes the process by which the consultant compiled information used in the fee estimate, based on a representative sample of the records.

The fee estimate is based on the consultant's estimate of the time required to process the request, applying the consultant's daily rate pursuant to a contract with the PGT.

To summarize the information in support of the fee estimate, the PGT states that the requested records are kept and maintained in several different formats. The original specifications for the system produced prior to 1991 are sorted in "text" files that are not in word processing format. Specifications for amendments in 1995 and 1996 are in WordPerfect 5.1 and WordPerfect 6.0 documents. Current specifications are contained in MS Word (97 or 2000) format. The PGT submits that the documents in "text" files and WordPefect cannot easily be converted to MS Word without major editing and authoring in order to have the information in a readable and printable format.

The following are the steps identified by the PGT as necessary in order to locate, retrieve, process and copy the requested records:

- Identify all screens in the database. This involves going to the security definitions for each of the different staff roles in the PGT. The security definitions identify each screen by name. Next, for each screen the screen number has to be identified. This is done by manually going to each screen map and one-by-one opening the map and recording the screen number. The screen maps are in electronic format and can be opened using a special editing software package.

- Using the screen number, go to each different location (folder) and search for the screen number. If the documentation is formatted in "text" files or WordPerfect, the document must be converted to MS Word. Many of the word processing "codes" do not convert correctly to MS Word, therefore manual editing must be done to complete the conversion to make the documents usable.

- After each of the different locations is searched, multiple documents for the same screen may exist. If this is the case, each version must be read and the most current version would have to be updated to ensure that it includes all of the information.

- Once the documentation is assembled, since it is not always maintained as the functionalities are enhanced, the documentation would have to be compared to the actual screens to ensure that the data fields are still being used as defined.

The estimated time to compile the list of all fields in the primary database is estimated by the consultant to be five days, at a daily rate of $552.00 per day, for a total of $2,760.00

The PGT submits that this cost is recoverable under the *Act* because there is no employee who is better qualified to process the request, it is required to pay the consultant pursuant to contract and should not have to absorb those out-of-pocket costs, and section 6(6) of Regulation 460 contemplates that an institution can recover out-of-pocket costs, including computer costs, incurred by the institution in locating, retrieving, processing and copying a record.

The appellant begins its submissions by stating that it is "seeking waiver if a fee that it believes is unnecessary and improper as….the information sought should already be available in the form of a computer related Training Manual(s) or other similar form to facilitate its dissemination." In the event there is any lack of clarity as to the issues before me, I note that this appeal is about a decision containing a fee estimate, and not about a decision to deny a request for waiver of a fee. The interim decision at issue before me does not contain a decision on fee waiver.

On the appropriateness of the fee estimate, the appellant submits that the PGT's computer consultant must have some sort of reference manual in which the various fields are named and explained, and that a simple photocopy of this manual would suffice. It submits that it stands to reason that if the present consultant was suddenly unable to continue to provide his or her services to the PGT that the PGT could not simply transfer this responsibility to another party without the help of some sort of written documentation.

With respect to the PGT's submission about the various formats of data (text files, MS Word files and WordPerfect files), the appellant submits that it can accept any and all such files in their original form.

The appellant suggests that a much easier option to reproduce the information sought is to simply press "Alt" + "Print Scrn" and then paste whatever has been captured into MS Word and within a couple of seconds a view of the computer screen has been reproduced which can then be easily printed. Although the appellant contends that this would be an easy process, it reiterates that it ought to be unnecessary as there must exist some sort of manual which can be photocopied.

The appellant questions the amount of the fee estimate suggesting that the consultant would stand to gain personally by using more time than might otherwise be necessary.

The appellant has also made submissions on the application of the exemptions referred to in the interim decision letter. However, as this is an interim decision only, and not a final decision on access, the applicability of these exemptions is not before me. As I have stressed above, the only issue before me is the appropriateness of the fee estimate.

In reply, the PGT repeats that all of the current fields, descriptions and their purposes are stored in electronic format. The electronic format includes the screens, fields, specifications and code in the same text and, therefore, the fields and descriptions must be sorted from the other information. This is the basis on which the fee estimates were provided.

The PGT states that although it has had hard copy training manuals historically, these paper manuals have not been continuously updated as the system (and screens) have changed many times. Accordingly, those manuals no longer accurately depict the current computer screens and fields and were not considered to be responsive to the request.

The PGT submits that since the numerous programs operated by it are varied and complex, it is not feasible to continually re-write training manuals for its staff. Rather, staff are trained in hands-on training sessions on-line.

The PGT disputes that its consultant has any motive to inflate the fee estimate, since it is paid at the same daily rate regardless of what technology functions it is asked to perform at the PGT.

Analysis

Given the information before me, which I find cannot be seriously challenged by the appellant, I find that the fee estimate provided by the PGT is reasonable.

First, it appears that there are approximately 1900 computer fields in the primary database of the PGT. Second, I accept that no current, comprehensive manual exists that would be responsive to the request, and that the information is stored in electronic format. The PGT has described in detail the steps required to locate, retrieve and process the information sought from its electronic records. It has also described in detail the method by which the consultant performed a search on a representative sample of the records.

Further, I am satisfied that the PGT has considered the appellant's suggestions and submissions as to simpler ways to perform the search, and has established that it has based its fee estimate on the most expedient method by which to retrieve the information requested. In response to the appellant's suggestion to use "Print Scrn", for instance, the PGT submits that using such a method would result in additional information being printed which would have to be severed. As to the appellant's offer to accept the information in whatever format it is found, it appears that the PGT must extract the fields and descriptions from the electronic text in which it is contained, which process requires conversion of the information to a usable format.

Paragraph 6 of section 6 of the Regulation permits the recovery of any costs incurred by an institution in locating, retrieving, processing and copying a record if those costs are specified in

an invoice received by the institution. Prior orders have upheld the recovery of invoiced costs by an institution, provided that the activities for which the institution was invoiced would have been recoverable under the *Act* if performed directly by the institution's employees (see, for instance, Order M-1090). In the appeal before me, I am satisfied that the activities the consultant proposes to perform are covered by section 57(1), and are activities for which the PGT could recover costs if they were performed directly by its employees. Accordingly, it is entitled to recover the amount for which it will be invoiced by its consultant for those activities.

As this appeals deals with an interim decision and a fee estimate, the search has not yet been performed. Therefore, an invoice does not yet exist, only an estimate of the eventual amount of that invoice by the consultant who will perform the search. Based on the PGT's representations, I find that this consultant is the person with the best ability and knowledge to perform the search, and that it was reasonable for the PGT to base its fee estimate on the consultant's assessment of his eventual invoice, as this is the amount that the PGT will have to pay for the search. I find no basis for the contention that the fee estimate may have been exaggerated by the consultant.

Although I uphold the fee estimate of the PGT, I note that the PGT has offered to assist the appellant in re-formulating its request, in order to reduce search fees. It has indicated that if the appellant advises it more precisely what information it seeks, it can disclose whether such information can be retrieved electronically on a list, whether the information would require a manual search or whether or not it is information which is retained.

ORDER:

I uphold the fee estimate of $2,760.00.

Original Signed By: December 12, 2003
Sherry Liang
Adjudicator