



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

ORDER PO-2845

Appeal PA08-379

Ministry of Children and Youth Services



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NATURE OF THE APPEAL:

The Ministry of Children and Youth Services (the Ministry) received an access request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for the following information:

1. A copy of the Service Contract between the Ministry and the Children's Aid Society (CAS) for the Districts of Sudbury and Manitoulin.
2. A copy of any and all Directives which have been issued to the CAS for the Districts of Sudbury and Manitoulin by the Ministry over the past two years.
3. A copy of the By-Laws and any amendments thereto of the CAS for the Districts of Sudbury and Manitoulin which have been filed with the Ministry in accordance with section 13 of the Child and Family Services Act.

In response to the appellant's request, the Ministry issued an interim access and fee decision in accordance with section 57(3) of the *Act*. The Ministry provided the appellant with a breakdown of the fee for access to the responsive records as follows:

Search time (3.00 hours x \$ 30.00 per hour)	\$ 90.00
Photocopies (665 pages x \$ 0.20 per page)	\$ 133.00
Total	\$ 223.00

With the interim decision, the Ministry also enclosed an index of the responsive records and advised the requester that "at this point in time, it does not look like severances will be made under the *Act*."

The requester, now the appellant, appealed the Ministry's fee estimate decision. In his appeal letter, he stated that he was appealing on the basis that payment of the fee would cause him undue financial hardship.

During mediation, the appellant submitted a fee waiver request to the Ministry under section 57(4)(b) (financial hardship). Subsequently, he provided the Ministry with financial documentation to support his request for a fee waiver on the basis of financial hardship.

Also during mediation, the appellant clarified his request to include only the following:

1. The latest version of the service contract between the Ministry and the Children's Aid Society for the Districts of Sudbury and Manitoulin.
2. A copy of any and all Directives which have been issued to the Children's Aid Society of the Districts of Sudbury and Manitoulin by the Ministry for the years 2007 and 2008.

3. The latest version of the By-Laws of the Children's Aid Society of the District of Sudbury and Manitoulin which have been filed with the Ministry in accordance with Section 13 of the *Child and Family Services Act*.

The clarification of the appellant's request reduced the number of responsive records from 665 to 205.

After considering the fee waiver request and the appellant's clarified request, the Ministry issued a revised fee decision granting the fee waiver, in part. The Ministry advised that it was prepared to waive the photocopy fee in its entirety (205 pages x \$0.20 = \$41.00) but that it was not prepared to waive the search fee (3 hours x \$30.00 = \$90.00).

The Ministry subsequently issued a second revised fee decision advising that in light of the appellant's narrowed request it had reduced the search time required to locate the responsive records to 2 hours; therefore, the search fee was now \$60.00. The Ministry also advised that upon receipt of the \$60.00 search fee, it would release the responsive records to the appellant.

The appellant confirmed with the mediator that, despite the second revised fee decision, he still wished to pursue the appeal and have this office review both the Ministry's fee and its decision with respect to the fee waiver. He also stated that there were new circumstances respecting his finances and asked if the Ministry would reconsider its decision and grant a full fee waiver. The appellant also offered to accept the requested records electronically or double sided in an effort to reduce the overall cost of processing his request. The Ministry, however, did not agree to further reduce the fee.

Accordingly, at issue in this appeal is the reasonableness of the \$60.00 fee charge for search time and the Ministry's decision not to grant the fee waiver in its entirety.

As mediation did not resolve the appeal, it was transferred to the adjudication stage of the appeal process for an inquiry.

I began my inquiry into this appeal by sending a Notice of Inquiry to the Ministry, seeking representations. The Ministry responded with a brief letter advising the following:

In addition to all of the facts regarding this request to date, I would like to point out that at no time, did the appellant refer to these records, as being a benefit to the general public. This is a personal request for which he is requesting a fee waiver.

Aside from this letter, the Ministry did not provide any other representations.

I then sent a Notice of Inquiry to the appellant, seeking representations. The appellant responded by email advising that he does not have any more submissions to offer. However, in his email, the appellant asked whether the Ministry has the capability to put the requested information on CD ROM at a fraction of the cost. As I believed that the Ministry should be given an opportunity

to answer the question, I sent a letter to the Ministry asking it to respond to the appellant's question. The Ministry responded with brief representations.

DISCUSSION:

FEE

Where the fee is \$100 or more, the fee estimate may be based on either

- the actual work done by the institution to respond to the request, or
- a review of a representative sample of the records and/or the advice of an individual who is familiar with the type and content of the records.

[MO-1699]

The purpose of a fee estimate is to give the requester sufficient information to make an informed decision on whether or not to pay the fee and pursue access [Orders P-81, MO-1367, MO-1479, MO-1614, MO-1699].

The fee estimate also assists requesters to decide whether to narrow the scope of a request in order to reduce the fees [Order MO-1520-I].

In all cases, the institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated [Order P-81, MO-1614].

This office may review an institution's fee and determine whether it complies with the fee provisions in the *Act* and Regulation 460, as set out below.

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, 6.1, 7 and 9 of Regulation 460. Sections 6, 7 and 9 are relevant to this appeal. They 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 records provided on CD-ROMs, \$10 for each CD-ROM.
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

As noted above, neither the Ministry nor the appellant submitted relevant representations in response to the Notice of Inquiry. The appellant, however, questioned whether the Ministry has the capability to put the requested information on CD ROM at a fraction of the cost. I put this question to the Ministry and it provided the following response:

[T]he Ministry's position was to waive that portion of the fees related to photocopy charges. The Ministry originally assessed photocopy charges at \$133.00 based on the scope of the request at that time. Subsequently, the appellant narrowed his request which reduced the amount of photocopy fees to \$41.00. The Ministry waived this fee.

It should also be noted that the Ministry had originally assessed a fee of \$90.00 for search time. In light of the appellant's request for a complete fee waiver, the Ministry's decision was to waive the photocopy charges in their entirety and reduce the amount of search time to \$60.00 even though the Ministry had completed the work required to prepared the records for release.

The Ministry has already waived the fees associated with providing the records to the appellant. No photocopying fees have been applied to the request. In fact, the records are ready for release. To provide the records in CD ROM would cost the Ministry additional preparation time to create the disc, in addition, the Ministry would need to consider the fee applicable to the creation of the disc.

The Ministry did not feel it was necessary to consider the cost of putting the records on disc as the decision was made to waive the fees associated with producing a photocopy of the records.

The only fees charged to the appellant relate to the search fee, which has been reduced. No fees have been charged for preparation or photocopying. It is requested that your office support the Ministry's decision with regard to the search fees.

Analysis and finding

Prior orders of this office have established that when reviewing an institution's decision to charge a fee, it is this office's responsibility to ensure that the amount estimated by the institution is reasonable in the circumstances. The burden of establishing reasonableness rest with the institution, and, the institution discharges this burden by providing detailed information as to how the fee has been calculated in accordance with the provisions of the *Act* and by producing sufficient evidence to support its claim [Orders M-301, M-324, M-2223, PO-2513].

The issue before me in the current appeal is whether the Ministry's fee of \$60.00 for search time is reasonable and is calculated in accordance with the provisions of the *Act*. There is no issue with respect to the charging of photocopy fees because the Ministry has indicated that it is prepared to waive that fee. Additionally, there is no apparent issue regarding the charging of preparation fees since, based on correspondence to the appellant and this office, it would appear that the Ministry is prepared to disclose the records in full to the appellant upon payment of the \$60.00 search fee.

In my view, the evidence provided by the Ministry in support of its \$60.00 search fee is not sufficient to substantiate its claim that it took 2 hours to search for the records responsive to the appellant's request. The Ministry provided no explanation as to where or how the records are kept or maintained, the volume of records that it was required to search, the specific steps that were necessary to locate them, the time involved in each step, or any other factors which would enable me to determine whether the fee is reasonable in the circumstances. Without any information to demonstrate that 2 hours of search time was required to locate the responsive records, it is not possible to determine whether the Ministry's fee is reasonable. Therefore, I do not uphold the Ministry's search fee of \$60.00 for 2 hours of search time and it is precluded from charging such a fee for the processing of the appellant's request.

As the Ministry has agreed to waive the photocopy fees and I have not upheld the Ministry's search fee, the records responsive to the appellant's request must be disclosed to the appellant without the requirement that he pay a fee. Accordingly, it is not necessary for me to review the Ministry's decision not to grant a waiver of the entire fee, as requested by the appellant.

ORDER:

1. I do not uphold the Ministry's search fee in the amount of \$60.00.
2. I order the Ministry to provide the appellant with a copy of the records no later than **December 16, 2009**.
2. In order to verify compliance with the provisions of this order, I reserve the right to require the Ministry to provide me with a copy of the decision issued to the appellant pursuant to Provision 1 of this order.

Original signed by: _____
Catherine Corban
Adjudicator

November 16, 2009