



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

# **ORDER 10**

**Appeal 880042**

**Ministry of the Solicitor General**



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>

Appeal Number 880042

**O R D E R**

This appeal was received pursuant to subsection 50(1) of the Freedom of Information and Protection of Privacy Act, 1987, which gives a person who has made a request for access to a record under subsection 24(1) a right to appeal to the Commissioner any decision of a head under the Act. Further subsection 57(4) of the Act allows a person who is required to pay a fee under subsection 57(1) to ask the Commissioner to review the head's decision to charge a fee or the amount of the fee.

The facts of the case are as follows:

1. On January 22, 1988, the Ministry of the Solicitor General (the "institution") received a request for access to all personal information about himself in the control of the institution, and "2,346 pages of OPP reports on alleged corruption in the York sherriff's department".
2. On February 23, 1988, the institution wrote to the appellant providing an estimate of the fees for the records requested. The institution indicated that its estimated fee of \$147.20 was comprised of \$51.20 for photocopying and \$96.00 for preparation time.
3. On March 17, 1988, the requester appealed the decision to charge a fee and the amount of the fee.

**[IPC Order 10/July 28, 1988]**

4. On May 2, 1988, I sent a notice to the appellant and the institution stating that I was conducting an inquiry into this matter to review the decision of the head of the institution. By letter dated May 16, 1988, I requested that written representations be made to me by June 13, 1988. I received written representations from both parties.

The issues that arise in the context of this appeal are as follows:

- A. Whether the amount of the estimated fees in this case were calculated in accordance with subsection 57(1) of the Act; and
- B. Whether the head's decision not to waive fees under subsection 57(3) of the Act was in accordance with the terms of the Act.

ISSUE A: Whether the amount of the estimated fees charged in this case were properly calculated in accordance with subsection 57(1) of the Act.

Subsection 57(1) of the Act reads as follows:

57.-(1) Where no provision is made for a charge or fee under any other Act, a head may require the person who makes a request for access to a record or for correction of a

record to pay,

- (a) a search charge for every hour of manual search required in excess of two hours 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; and
- (d) shipping costs.

In its submissions, the institution notes that the relevant record consists of 320 rather than 2,346 pages. The institution also indicates that the record refers to several individuals and that "considerable severing of personal information is required". Because of the need for severances, the institution states that copying and preparation time would be extensive.

The institution goes on to point out that the fee estimate does not include either the parts of the record which it considers to be personal information about the appellant or those which it intends to exempt from disclosure. The institution bases estimated photocopying charges at the rate of 20 cents per page for the 256 pages which do not, in the opinion of the institution, contain personal information or information that should be withheld pursuant to the Act.

The estimated four hours of preparation time is justified by the institution on the basis that almost every page of the record would likely require severances, and that only costs associated with the physical act of creating the severed record (i.e. making the severed parts unreadable and checking the final severed copy) have been included

in the estimate.

Having considered the institution's submissions on this issue, I find that the cost estimates are reasonable and properly calculated in accordance with subsection 57(1) of the Act. The photocopy charges are consistent with the fee charges outlined in Ontario Regulation 532/87, and in my view, the activity included within the scope of preparation time under subsection 57(1) (b) is proper and not excessive.

Subsection 57(1) provides the head with discretion as to whether or not a fee is charged in an individual case (see my Order in Appeal No. 880091). I find no error by the head in the exercise of his discretion in favour of charging a fee in this case, subject to consideration of the issue of fee waiver, below.

ISSUE B: Whether the head's decision not to waive fees under subsection 57(3) of the Act was in accordance with the terms of the Act.

Subsection 57(3) provides that:

57.-(3) A head may waive the payment of all or any part of an amount required to be paid under this Act where, 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;
- (d) whether the record contains personal information relating to the person who requested it; and
- (e) any other matter prescribed in the regulations.

I considered the interpretation of the wording of subsection 57(3) in a previous order (see my Order in Appeal Number 880091). In that case I found that "the wording of subsection 57(3) creates an exhaustive list of the matters to be considered by the head in determining if a waiver of all or any part of a fee is appropriate." If a head properly decides that a fee should be charged under subsection 57(1), he must then consider whether or not any of the enumerated matters in subsection 57(3) apply.

I believe that the responsibility lies with the requester to provide adequate evidence to support a claim for fee waiver. In this case the appellant has claimed financial hardship under subsection 57(3) (b), but he has offered no evidence to support his claim.

Accordingly, I find that the appellant has not demonstrated financial hardship in this case, and I support the institution's position that the grounds for waiver under subsection 57(3) do not apply. Therefore, the appeal is dismissed.

Original signed by: \_\_\_\_\_  
Sidney B. Linden

\_\_\_\_\_ July 28, 1988  
Date

