



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

# ORDER P-245

Appeal 900292

Ministry of Health



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**O R D E R**

On July 8, 1991, the undersigned was appointed Assistant Commissioner and received a delegation of the power and duty to conduct inquiries and make orders under the Freedom of Information and Protection of Privacy Act, 1987 (the "Act").

On April 27, 1990, a request was submitted to the Ministry of Health (the "institution") for access to a copy of a report entitled "Operational Review of Psychiatric Hospitals Vocational Programs Final Report" prepared by Phillips Group of Companies.

The institution decided that access to the requested record would be granted and charged a fee of \$30.80 for photocopying the 154-page report. The institution also advised the requester that he could seek a fee waiver. The requester felt that the report contained information which affected his interests, and could therefore be said to constitute personal information, for which a fee could not be charged. He also requested a fee waiver based on financial hardship.

The institution maintained that the record did not contain personal information about the requester, and also denied the request for a fee waiver on the basis that the requester had not submitted financial data necessary to support a claim of financial hardship.

The requester appealed the head's decision.

The issues in the appeal are as follows:

1. Did the record constitute personal information about the appellant, which would prohibit the institution from charging a fee?
  
2. Was the head's decision not to waive the fee in accordance with the provisions of the Act?

Section 57(1a) of the Act provides:

Despite subsection (1), a head shall not require an individual to pay a fee for access to his or her own personal information.

Personal information is defined in section 2(1) of the Act, which states in part:

"personal information" means recorded information about an identifiable individual . . . (emphasis added).

I have reviewed the record and I find that it does not contain any personal information about the appellant. Therefore, section 57(1a) does not apply in the circumstances of this appeal.

Section 57(3) of the Act provides:

A head shall 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,

...

- (b) whether the payment will cause a financial hardship for the person requesting the record;

...

In Order 95, former Commissioner Sidney B. Linden commented on the burden of proof in establishing financial hardship, as follows:

The Act is silent as to who bears the burden of proof in respect of subsection 57(3). However, it is a general principle that a party asserting a right or a duty has the onus of proving its case and therefore, the burden of establishing that subsection 57(3)(b) applies falls on . . . the appellant.

During the mediation stage of the appeal, financial information was supplied by the appellant. I have reviewed this information, together with the fee being charged by the institution, and, in my view, payment of the fee would not result in financial hardship to the appellant within the meaning of section 57(3)(b).

**ORDER:**

Accordingly, I uphold the decision of the head not to waive the fee charged to the appellant for access to the record.

Original signed by:  
Tom Mitchinson  
Assistant Commissioner

October 30, 1991  
Date