



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

ORDER P-406

Appeal P-9200306

Stadium Corporation of Ontario Limited



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/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

ORDER

BACKGROUND:

Stadium Corporation of Ontario Limited (SkyDome) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to "Any 1990, 1991 consultant reports. Begin with a list of such reports, their costs, titles,". SkyDome responded:

Further to your ... request ...

please be advised in accordance with section 57(2) of the Act that we estimate our fee for the costs of processing the request to be approximately \$130.00, estimated as follows:

Manual search to locate record in excess of 2 hours (\$7.50/15 minutes)	\$60.00
Costs of preparing record for disclosure (\$7.50/15 minutes)	\$60.00
Photocopy costs (20c/page)	\$10.00
Shipping costs	\$20.00

Payment of \$65.00, 50 per cent of the estimated fee, was required prior to processing the request. SkyDome later corrected the fee estimate and required payment to \$150.00 and \$75.00, respectively. The requester appealed the revised fee estimate.

Mediation of the appeal was not successful and the matter proceeded to inquiry. Notice that an inquiry was being conducted was sent to the appellant and SkyDome. Written representations were received from SkyDome only. Although the appellant did not make written representations, he confirmed to the Appeals Officer that he was limiting his request to the reports only.

ISSUE:

The sole issue for me to determine is whether SkyDome properly discharged its obligations under the Act when responding to the appellant's request.

SUBMISSIONS/CONCLUSIONS:

In Order 81, former Commissioner Sidney B. Linden outlined the head's obligations when responding to requests for records. He stated:

... I intend to set out what I see as the head's obligation when responding to a request for records. In doing so I am cognizant of the fact that a head may wish to charge a fee in some cases, and also that the types of requests vary dramatically, from one page of written information in some cases, to thousands of separate records in others.

Section 26 requires the head to issue a notice to the requester within a 30_day period, subject to ... sections 27 and 28. After the head receives the request and any necessary clarification is done, the 30_day time period begins to run. If the head intends to provide full access, he or she must advise the requester and cause the record to be produced. In cases where access is to be granted, either totally or partially, the head may also decide to charge a fee. If so, a fees estimate must be provided to the requester. If the head determines that access can only be granted in part or not at all, section 29 of the Act stipulates that the notice must set out the specific provisions of the Act under which access is denied.

It is clear that where a record is not large or unduly expensive to produce, and where no complex consultations are necessary, it is a relatively straightforward exercise for the institution to provide the requester with both a detailed fees estimate (if fees are applicable) and a decision under section 26 regarding access in one letter within 30 calendar days.

...

Commissioner Linden then outlined the steps to be taken by institutions in dealing with more complicated cases. He stated:

Section 27 of the Act authorizes a head to extend the time limit set out in section 26 ... where, (i) the request is for a large number of records or necessitates a search through a large number of records and meeting the time limit would unreasonably interfere with the operations of the institution; or (ii) consultations

that cannot reasonably be completed within the time limit are necessary to comply with the request.

Section 27 is not applicable to a situation where the institution is experiencing a problem because a record is unduly expensive to produce for inspection by the head in making a decision. This is true whether the undue expense is caused by either the size of the record, the number of records or the physical location of the record within the institution.

[Where a record is unduly expensive to produce for inspection by the head in making a decision] ... the Act allows the head to provide the requester with a fees estimate pursuant to subsection 57(2) of the Act. This estimate should be accompanied by an "interim" notice pursuant to section 26. This "interim" notice should give the requester an indication of whether he or she is likely to be given access to the requested records, together with a reasonable estimate of any proposed fees. In my view, a requester must be provided with sufficient information to make an informed decision regarding payment of fees, and it is the responsibility of the head to take whatever steps are necessary to ensure that the fees estimate is based on a reasonable understanding of the costs involved in providing access. Anything less, in my view, would compromise and undermine the underlying principles of the Act.

... Admittedly, the institution will have to bear the costs incurred in obtaining the necessary familiarity with the records, however, this is consistent with other provisions of the Act. For example, subsection 57(1)(a) stipulates that the first two hours of manual search time required to locate a record must be absorbed by the institution and cannot be passed on to the requester.

In other words, in the vast majority of cases, the institution will respond with a decision regarding access and a fee estimate, if any, within thirty days of receipt of the request. Only in certain limited circumstances will the institution be permitted to rely on section 27 or to issue an interim notice of decision.

In the circumstances of this appeal, the letter sent by SkyDome in response to the appellant's request does not appear to conform to any of the three types of possible responses outlined by Commissioner Linden.

In its representations, SkyDome states:

... The fee estimate was for the searching and preparation of any reports as well as photocopy costs estimated at 50 pages.

In formulating our fee estimate, we canvassed the department heads whose departments could have consultant reports for 1990 and 1991. We asked those department heads, after reasonable analysis which included a preliminary search,

to estimate the time that would be involved in searching for any requested documents. We have extensive files and the relevant people could not recall whether or not there were any such reports and consequently extensive sampling would not have proved worthwhile. The preparation charge could only be estimated since the reports, if any, are not known as yet. The photocopy charge again was estimated as this charge can only be accurate once the reports if any are discovered.

... [S]hould the requester pay our fee estimate, we will provide an accounting of the actual search time, preparation time and photocopies ... and we would agree to refund any excess over and above the actual fee.

SkyDome's decision letter and its representations do not provide sufficient evidence for me to conclude that SkyDome finds itself in a situation which would support the use of section 27 or an interim notice. Although SkyDome sought the advice of certain employees, the representations indicate that these individuals were not sufficiently familiar with the existence of the requested records to be of any real assistance in responding to the appellant's request in the appropriate manner.

In my view, the requirements of section 26 apply and upon receipt of the request SkyDome should have issued a final decision on access to the appellant within thirty days of receiving the request.

A number of previous orders have discussed the requirements for the content of a final decision letter (Orders 81, 154, P-324). The provisions of section 29(1)(b) of the Act require that the head provide in the section 26 notice a general description of the records responding to the request and, with respect to all records withheld by the institution, the head should clearly identify the specific sections or subsections of the Act used to exempt specific portions of each record. In addition, the June 1992 issue of IPC Practices, prepared by this office, outlined the requirements of a proper decision letter. A copy of IPC Practices is enclosed with the copy of this order sent to SkyDome.

In summary, in my view, SkyDome has not properly discharged its obligations under the sections 26 and 29(1)(b) of the Act.

ORDER:

1. I order SkyDome to issue a final decision letter to the appellant within 20 days of the date of this order.
2. In order to verify compliance with this order, I order SkyDome to provide me with a copy of the decision letter sent to the appellant within 25 days of the date of this order. Such notice should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: _____
Tom Wright
Commissioner

January 29, 1993