



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

ORDER P-490

Appeal P-9300039

Ministry of the Environment



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ORDER

BACKGROUND:

The Ministry of the Environment (now the Ministry of the Environment and Energy) (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to records relating to the Penetanguishine Mental Health Centre (the PMHC) and the Oak Ridge Division, specifically relating to the quality of drinking water and the water tower of the PMHC for November 1, 1990 through November 1, 1991. The Ministry charged a fee of \$67.40, which the requester paid, and granted access to 82 pages of records, stating in its covering letter that the records provided are all the records that exist in the Ministry's files pertaining to the request. The requester appealed the Ministry's decision on the basis that not all of the records provided are responsive to his request, that additional responsive records exist which were not disclosed to him, and that the fee charged was excessive.

Mediation was not successful and notice that an inquiry was being conducted to review the Ministry's decision was sent to the appellant and the Ministry. Representations were received from both parties.

ISSUES:

The issues arising in this appeal are:

- A: Whether the Ministry's search for records responsive to the request was reasonable in the circumstances.
- B: Whether the records provided to the appellant were responsive to his request.
- C: Whether the fees charged by the Ministry were calculated in accordance with the provisions of section 57(1) of the Act.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the Ministry's search for records responsive to the request was reasonable in the circumstances.

In his original request, the appellant identified the Barrie District Office and the Laboratory Services Branch of the Ministry as the locations to which the search for records responsive to his

request should be limited. In his representations, the appellant indicated that he believes the same two locations at the Ministry should have been searched for responsive records.

The Ministry's written representations include an affidavit detailing a search of the Barrie District Office. Having reviewed the representations and the affidavit submitted to me, I am satisfied that the search conducted by the Ministry for records responsive to the appellant's request at the Barrie District Office was detailed, comprehensive and reasonable in the circumstances.

The Ministry's representations do not, however, indicate a search of the Laboratory Services Branch. The Ministry's representations indicate that certain specific records at the Laboratory Services Branch were the subject of a different request by the appellant but that request was considered abandoned by the Ministry after the appellant failed to provide a required fee deposit. In my view, the existence and subsequent abandonment of the appellant's other request does not affect the Ministry's obligation to search the Laboratory Services Branch for records responsive to the request in this matter.

In my view, the Ministry's search was not reasonable in the circumstances in that the Laboratory Services Branch should have been searched and was not.

ISSUE B: Whether the records provided to the appellant were responsive to his request.

As has been stated in a number of previous orders (Orders 13, 33, 38, and 134), both requesters and institutions have certain obligations with respect to access requests under the Act. These obligations are set out in section 24 with respect to general access requests.

Sections 24(1) and (2) read:

- (1) A person seeking access to a record shall make a request therefor in writing to the institution that the person believes has custody or control of the record and shall provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record.
- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

An institution that receives a broadly worded request has three choices in making its response. It can choose to respond literally to the request, which may involve an institution-wide search for the records requested; it can request further information from the requester in order to narrow its

area of search; or it can narrow the search unilaterally. If the third option is chosen, the institution must outline the limits of the search to the appellant.

The Ministry in this case submits that the request was sufficiently detailed, as worded by the appellant. The appellant's request makes specific reference to quality of drinking water and to the locations and time frame to which records are to relate. The records provided by the Ministry relate to the subject matter of the request and the time period for which records were sought. In my view, the records are responsive to the appellant's request.

ISSUE C: Whether the fees charged by the Ministry were calculated in accordance with the provisions of section 57(1) of the Act.

Section 57(1) of the Act states:

Where no provision is made for a charge or fee under any other Act, a head shall require the person who makes a request for access to 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.

Section 6 of R.R.O. 1990, Reg. 460 made under the Act states, in part:

The following are the fees that shall be charged for the purposes of subsection 57(1) of the Act:

1. For photocopies and computer printouts, 20 cents per page.
- ...
3. For manually searching for a record after two hours have been spent searching, \$7.50 for each fifteen minutes spent by any person.

4. For preparing a record for disclosure, including severing a part of the record, \$7.50 for each fifteen minutes spent by any person.

...

The Ministry issued a fee estimate in the following terms:

Search time 3 hours @ \$30/hour (the first two hours are free and have been subtracted)	\$30.00
Preparation time 1/2 hour @ \$30.00/hour	\$15.00
Photocopying 112 pages @ \$0.20 each	\$22.40
Total	\$67.40

In support of the search charge, the Ministry has provided an affidavit sworn by the Senior Environmental Officer who conducted the search, attesting that the search lasted three hours. Based on the representations and the affidavit submitted, I find that the Ministry's search charge is appropriate.

The Ministry's representations explain that the half hour of preparation time charged reflects time spent by the Senior Environmental Officer who copied the record making copies of computer printouts on continuous feed paper which, is too flimsy to separate and feed through the photocopier automatically in a batch.

In Order 184 then Assistant Commissioner Tom Wright in dealing with a similar situation stated that "I feel that \$.20 per page is the maximum amount that may be charged for photocopying, which charge includes the cost of an individual 'feeding the machine'." I agree with this view, and find that the Ministry may not include the time to actually photocopy the records within the calculation of preparation time.

The Ministry's representations indicate that the appellant was originally charged for 112 photocopied pages, but only 82 photocopies needed to be made. The photocopying charge is therefore reduced by \$6.00. The Ministry adds that a courier cost of \$2.10 was incurred in sending the record from the Ministry's office to the appellant. Accordingly, the Ministry has asked its Financial and Capital Management Branch to provide the appellant with a refund in the amount of \$3.90.

In my view, the amount to be refunded to the appellant should include the \$15.00 charge for preparation time. The total to be refunded to the appellant is therefore \$18.90.

ORDER:

1. I order the Ministry to search the Laboratory Services Branch for records responsive to the appellant's request and to notify the appellant by letter as to the results, within 15 days of the date of this order.
2. If, as a result of this search, the Board identifies any records responsive to the request, I order the Board to provide a decision regarding access to the records in accordance with the Act, considering the date of this order as this date of the request and without recourse to a time extension.
3. I order the Ministry to refund the overpayment of \$18.90 to the appellant.
4. I uphold the Ministry's decision to charge a fee in the amount of \$48.50.
5. In order to verify compliance with the provisions of this order, I order the Ministry to provide me with a copy of the letter sent to the appellant pursuant to Provision 1 and proof of the refund to be issued to the appellant pursuant to Provision 3 of this order, **only** upon request.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ June 30, 1993