



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

ORDER P-530

Appeal P-9200723

Management Board Secretariat



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ORDER

BACKGROUND:

The Ministry of Government Services (now Management Board Secretariat) (the Secretariat) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to information relating to promotions and job re-classification in the Design Services Branch (the Branch) of the Secretariat, including the number of promotions and positions that have been re-classified, the previous and new position titles and classifications, and the total increase in salary dollars associated with the promotions and re-classifications. The requester specified that the responsive information was to cover the time period from January 1, 1990 to October 1, 1992.

The Secretariat decided to give access to the requested information and issued a fee estimate of \$2115.00 pursuant to section 57 of the Act, to process the request. The Secretariat advised the requester that a total of 72.5 hours of search time would be required to compile the requested information, and that the fee estimate of \$2115.00 was for 70.5 hours of search time, calculated at the rate of \$30.00 per hour. The requester appealed the Secretariat's fee estimate.

During mediation, the appellant requested the Secretariat to waive the fee on the basis that payment will cause a financial hardship for her and provided the Secretariat with a financial statement. The Secretariat refused to waive the fee and also provided the appellant with the following clarification of its decision as to the fee estimate:

The information you have requested does exist but not in any single set of organized records. To provide the information as requested, would require an extensive search and compilation of records from approximately 250 files involving the Design Services administration section, Human Resources Branch and payroll section. This compilation is estimated to require 8-10 person days to complete.

The requester asked for a review of the Secretariat's refusal to waive the fee.

Mediation of the appeal was not successful, and notice that an inquiry was being conducted to review the decisions of the Secretariat was sent to the Secretariat and the appellant. Representations were received from the Secretariat.

ISSUES:

The issues arising in this appeal are:

- A. Whether the amount of the estimated fee was calculated in accordance with the provisions of the Act.
- B. Whether the Secretariat's decision not to waive the fee was in accordance with the provisions of the Act.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the amount of the estimated fee was calculated in accordance with the provisions of the Act.

Section 57(1)(a) of the Act reads:

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 search charge for every hour of manual search required in excess of two hours to locate a record;

Section 6 of Regulation 460, under the Act provides:

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

...

- 3. For manually searching for a record after two hours have been spent searching, \$7.50 for each fifteen minutes spent by any person.

In its representations the Secretariat states that the fee estimate was based on information provided by the Acting Director of the Branch and a consultant in the Human Resources Services Branch of the Secretariat.

The Secretariat submits that the Branch underwent a major structural reorganization in early 1990. During this re-organization, an overhaul of personnel, classifications, job descriptions and responsibilities was undertaken and the entire structure of the Branch was re-designed.

The Secretariat states that many positions were re-titled, responsibilities were changed, individuals were directly assigned to newly created positions and others were given lateral re-classifications. It claims that this was a very complex task due to the technical responsibilities of the Branch and the high number of personnel (approximately 200 active). The Secretariat advises that the Branch's human resources data is more complex and varied than what is typically found in the Ontario Public Service.

The Secretariat has provided me with a copy of a memorandum from the human resources consultant which outlines the process involved in collecting and compiling the information, and the estimated amount of time required to accomplish this task.

The Secretariat states that the specific information requested on the Branch's reorganization of personnel does not exist in computerized or other databases in the Secretariat. It indicates that all additional personnel changes since the reorganization would also have to be researched, and that a consultant who specializes in human resources information for technical/professional categories, would have to search through the corporate files for all current and previous Branch employees, approximately 250, and extract the relevant data on personnel changes directly.

The human resources consultant estimates that a person familiar with this material would be able to search for and extract the data from the files at a rate of 40 per day, which amounts to just under 6 per hour or one file every ten minutes. As the majority of Branch employees have been employed in the Ontario Public Service for a considerable time, most files are detailed and voluminous. The Secretariat indicates that the requested information is not available on a single sheet of paper in the file; rather, it would have to be researched and sought out. In some cases, personnel files would have to be retrieved from the provincial archives. Collecting information from the files in this manner would take 6-7 days.

The Secretariat further explains that after the exact number of requested personnel changes have been determined, they would have to be cross-referenced with payroll and job description files which are located in separate program areas, in order to organize, compile and analyze the data to respond to the appellant's specific questions concerning salaries, promotions and re-classifications. This task would require an additional one to two days. A final half to full day would be required to write the report which would contain the requested information, for a total of 8-10 days.

Although the appellant did not make representations, she did advise in her letter of appeal that she felt the information requested should be readily available, and that if that was not the case, then the Secretariat's filing and records administration system must be flawed to require 70.50 hours to retrieve the relatively recent data.

I acknowledge that the appellant is at a disadvantage in making representations on this issue, as she cannot know the content or extent of the records existing within the Secretariat, nor of the effects of a reorganization within a branch of the Secretariat on record holdings. However, in light of the Secretariat's representations and its detailed explanation of the fee estimate, I am satisfied that the estimated search time of 70.50 hours is reasonable in the circumstances, and the fee is calculated in accordance with section 57(1)(a) of the Act and section 6 of Regulation 460, under the Act.

ISSUE B: Whether the Secretariat's decision not to waive the fee was in accordance with the provisions of the Act.

The appellant requested a fee waiver under section 57(4)(b) of the Act. This section reads as follows:

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,

whether the payment will cause a financial hardship for the person requesting the record;

In interpreting the opening paragraph of section 57(4) of the Act, Assistant Commissioner Irwin Glasberg has stated that the phrase "in the head's opinion" means that the head of an institution has a duty to determine whether it is fair and equitable in a particular case to waive a fee and held that the Commissioner has a statutory authority to review the correctness of that decision (Order P-474). I agree with Assistant Commissioner Glasberg's view and adopt it for the purposes of this appeal.

It has been established in a number of orders that the person requesting a fee waiver has the responsibility to provide adequate evidence to support a claim for a fee waiver (Orders 4, 10 and 111).

The appellant has submitted that payment of the fee would cause an undue financial hardship to her and her family, and provided a financial statement in support of her claim.

The Secretariat states that due to the amount of time and resources required to process the request, and the fact that the Secretariat would have no practical use for such compiled information once it is created, it is not prepared to waive the fees in advance of the record's creation.

In addition, the Secretariat submits that after reviewing the personal financial statement of the appellant, it did not find that payment of the fee would cause her financial hardship.

I have reviewed the financial statement provided by the appellant, and in my view, it does not contain sufficient information/evidence to support a claim for a fee waiver under section 57(4)(b) of the Act. I find the Secretariat's decision not to waive the fee is in accordance with the provisions of the Act.

ORDER:

I uphold the Secretariat's decision.

Original signed by: _____
Asfaw Seife
Inquiry Officer

_____ September 3, 1993