



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

# **ORDER P-526**

**Appeal P-9200729**

**Ministry of Environment and Energy**



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# ORDER

The Ministry of the Environment (now the Ministry of 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 a Certificate of Approval received by a named company for use of a particular landfill site. The requester is a rural citizens' group which is involved with waste management and disposal issues in the community. The Ministry decided to give partial access to the requested records, and issued a fee estimate of \$763.00 to process the request. Upon receipt of the estimate, the requester narrowed the scope of the request, which resulted in the fee being eventually reduced to \$437.20. The requester sought a waiver of this fee on the grounds that payment will cause financial hardship to the requester, under section 57(4)(b) of the Act. The Ministry refused to waive the fee, and the requester appealed this decision.

As mediation was not possible, notice that an inquiry was being conducted was sent to the Ministry and the appellant. The Ministry was also asked to consider additional information supplied to this office by the appellant regarding the fee waiver request. Representations were received from both parties.

The sole issue in this appeal is whether the Ministry's decision not to waive the fee was proper in the circumstances of this appeal.

Section 57(4)(b) of the Act states:

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), 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 the fee waiver has the responsibility to provide adequate evidence to support such a claim (Orders 4, 10 and 111).

The appellant states that its funds had been seriously depleted by various operating costs, and that it anticipates considerable costs as it moves into the Environmental Assessment for the proposed site expansion.

The appellant provided to the Ministry and to this office its financial statements which showed its bank balance around the time of the request and a projected deficit by the end of December 31, 1993.

In its representations, the Ministry submits that the actual cost of processing the request significantly exceeded the chargeable fees; that there is no Environmental Assessment hearing scheduled or planned with respect to the landfill site in question, and that in any case, certain resources are available to groups which receive intervenor status at Environmental Assessment hearings. In addition, the Ministry stated that while the appellant has indicated that it will experience a deficit at the end of the year, "there is no evidence of the revenue raising activities, membership costs, fund raising activities that this group will undertake, and how the resources are spent." The Ministry submits:

If a projected deficit would be sufficient to establish a financial hardship... it would eliminate the "user pay principle" established by the Commissioner in Order 111. Virtually all requesters with outstanding loans or mortgages that cannot be liquidated would be able to have their request processed free of charge.

While I appreciate that there may be many demands on the meagre financial resources of citizens' groups such as the appellant and their future financial picture is often uncertain, I must determine in the circumstances of this appeal whether there is sufficient evidence of financial hardship that warrants shifting the financial burden from the requester to the government and ultimately to the public. Although I realize that circumstances change over time, in my view, the financial resources available to a requester at the time of an access request is a significant factor to consider. Based on the evidence before me, it appears that the appellant's bank balance at the time of the request was sufficient to cover the costs of processing the request. For this reason, I am unable to conclude that payment of the fee will cause a financial hardship for the requester. I am satisfied that the Ministry's decision not to waive the fee is fair and equitable in the circumstances of this appeal.

## **ORDER:**

I uphold the Ministry's decision.

Original signed by: \_\_\_\_\_

Asfaw Seife  
Inquiry Officer

\_\_\_\_\_  
August 30, 1993