



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

# **ORDER P-591**

**Appeal P-9300292**

**Management Board Secretariat**



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# ORDER

## BACKGROUND:

Management Board Secretariat (the Secretariat) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to:

- (i) a detailed listing of all buildings and properties owned by the Government of Ontario;
- (ii) a detailed listing of all buildings and properties rented or leased by the Government of Ontario;
- (iii) a detailed listing of any buildings/properties owned by the Government of Ontario and leased/rented to others, including copies of said lease or rental agreements.

For points (i) and (ii) above, please also include a statement of the purchase price of said buildings and properties, as well as a current market value assessment.

The Secretariat provided the requester with a fee estimate of \$7,324 pursuant to section 57(1) of the Act for search time, preparation and photocopying. The Secretariat advised the requester of his right to request a waiver of the fee. In addition, the Secretariat sought clarification from the appellant with respect to the last paragraph of his request.

The requester asked the Secretariat to waive the fee on the grounds that payment would cause him financial hardship, and that dissemination of the records would benefit public health and safety. The requester clarified that, with respect to the last paragraph of his request, he required "the purchase prices of all buildings/properties which are currently still owned by the Government of Ontario, as well as the current assessed values (if available)".

The Secretariat decided not to waive the fee and the requester appealed this decision.

While the appellant did not appeal the Secretariat's decision in respect to the last paragraph of the request, it was determined during mediation that records responsive to this part of the request were publicly available. Consequently, this part of the request was withdrawn by the appellant.

Mediation on the issue of fee waiver was not successful and notice that an inquiry was being conducted was sent to the appellant and the Secretariat. Representations were received from the Secretariat only. The appellant stated that he would be relying on the information he had previously provided to the Secretariat and this office.

In its representations, the Secretariat indicates that "the cost of generating the lists of buildings and properties owned and leased by and to the Government of Ontario is less than expected" thereby reducing the fee estimate to \$7,219.

The sole issue in this appeal is whether the decision by the Secretariat not to waive the fee was proper in the circumstances of this appeal.

Section 57(4) of the Act reads, in part:

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;

(c) whether dissemination of the record will benefit public health or safety;

...

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 that such a waiver is appropriate. (Orders 4, 10, 111 and P-425).

The appellant has submitted no specific arguments in support of the assertion that dissemination of the records would benefit public health and safety. Accordingly, I find that section 57(4)(c) of the Act does not apply.

In support of his request to the Secretariat to waive the fee, the appellant provided evidence that he has a modest income and monthly expenses. The appellant did not, however, supply any evidence respecting his assets or his net worth. Without this type of information, it is not possible to determine whether payment of the fee would cause the appellant financial hardship. For the purposes of this appeal, however, I am prepared to assume that an expenditure of \$7,219 to obtain the records would cause a financial hardship to the appellant.

In Order P-473, Assistant Commissioner Irwin Glasberg interpreted the opening paragraph of section 57(4) of the Act. Assistant Commissioner Glasberg 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 the Commissioner or his delegate has the statutory authority to review the correctness of that decision.

In its representations, the Secretariat has provided a very detailed description as to how the fee was calculated and, with respect to the issue of waiver, states:

The Ministry has been flexible and reasonable in processing this request. We contacted the requester to discuss a possible narrowing or modification of the request so as to lower fees. We also directed the requester to where he could find some of the information he requested that is publicly available. This reflects our commitment to working within the spirit of the Act. The requester has not provided sufficient evidence to support his request for a waiver and refuses to narrow his request. Given current fiscal realities and constraints, it would be neither fair nor equitable nor appropriate for Management Board to issue a waiver of a fee in excess of \$7,000.

Having considered the representations received and based on the evidence provided to me, it is my view that it would not be "fair and equitable" to waive the fee in the circumstances of this appeal. In coming to this conclusion, I have considered the manner in which the Secretariat has attempted to respond to the appellant's request; the fact that the request involves a very large volume of records; that the appellant did not narrow the scope of his request; that the appellant has not advanced a compromise solution which would reduce the costs; and that waiving of the fee will shift an unreasonable burden of the cost of access from the appellant to both the Secretariat and the public, resulting in significant interference with the operations of the Secretariat.

My conclusion, therefore, is that the Secretariat's decision not to waive the \$7,219 fee was based on fair and equitable grounds and was proper in the circumstances of this appeal.

**ORDER:**

I uphold the Secretariat's decision not to waive the fee.

Original signed by: \_\_\_\_\_  
Holly Big Canoe  
Inquiry Officer

\_\_\_\_\_ December 1, 1993