



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER P-566

Appeals P-9300221 and P-9300222

Ministry of Health



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ORDER

The Ministry of Health (the Ministry) received two requests under the Freedom of Information and Protection of Privacy Act (the Act).

The first request was for access to a "copy of all incident reports, memos or documents related to allegations of abuse of patients by staff at the Oak Ridge division of the Penetanguishene Mental Health Centre". In its decision, the Ministry informed the requester that the record was 42 pages in length and provided a fee of \$8.40. This fee was calculated as the cost to photocopy the entire record, at \$.20 per page.

The second request was for access to a "list of names of all staff who worked at the Oak Ridge division of the Penetanguishene Mental Health Centre from January 1, 1963". In its decision, the Ministry informed the requester that the record was 21 pages in length and provided a fee of \$56.70. This fee was calculated as the cost to photocopy the entire record at \$.20 per page, in addition to 1.5 hour of chargeable search time at \$7.50 per 15 minute of search.

In each decision letter, the Ministry advised the requester of his right to request a waiver of the fees.

The requester did not dispute the amount of the fees and provided the Ministry with two separate letters requesting fee waivers. After reviewing the requester's submissions the Ministry declined to waive the fees in both cases. The requester appealed the decision of the Ministry not to waive the fees.

Mediation of the appeals was not successful, and notice that an inquiry was being conducted was sent to the appellant and the Ministry. Representations were received from the Ministry only.

The sole issue in this appeal is whether the Ministry's decision to refuse to waive the fee was made in accordance with section 57(4) of the Act.

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

...

- (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;

...

In Order P-474, Assistant Commissioner Irwin 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 held that the Commissioner has a statutory authority to review the correctness of that decision. 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 10, P-425 and P-463).

In its representations, the Ministry indicates that its decision not to waive the fee was based, in part, on the following considerations:

It is the Ministry's position that we exercised proper discretion at the time the fee waiver request was made as insufficient evidence was provided by the appellant.

... the requester must provide the institution with information concerning his or her financial position, including assets, income, expenses. The Ministry submits that no such evidence was ever provided to the Ministry.

The appellant argues that the fee should be waived under the Act, since payment of the fee will cause him financial hardship and that "[He represents] a group of current and former inmates of Oak Ridge operating with zero financial resources. Any documentation which might assist us in substantiating any allegations made to date would certainly benefit public health and safety".

The appellant stated that he is the recipient of general welfare assistance and that he is committed to pay monthly child support to his former wife. However, he has not provided any further information concerning his assets and expenses in support of his position. Without detailed information of this sort, I am unable to determine if payment of the fees requested by the Ministry would, in fact, cause financial hardship to the appellant. Accordingly, I am not convinced that payment of the fee would cause the appellant financial hardship.

With respect to the issue of the benefit to public health and/or safety, the appellant originally argued that the release of the record would benefit public health and safety under section 54(4)(c) of the Act. However, no specific arguments, other than those addressed above, have been presented to support this assertion. Accordingly, I find that the appellant has not demonstrated a connection between the disclosure of the record and a benefit to public health or safety.

I am of the view that the appellant has not discharged his responsibility to provide adequate evidence to support his claim for a fee waiver.

ORDER:

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

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ October 29, 1993