



Information and Privacy
Commissioner/Ontario

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

ORDER M-229

Appeal M-9300297

Hamilton-Wentworth Regional Police Services Board



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

ORDER

BACKGROUND:

The Hamilton-Wentworth Regional Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to:

- (i) a copy of all policies and procedures of your force;
- (ii) copies of job descriptions for all employees of your force;
- (iii) copies of all Freedom of Information requests received by your force, since the inception of the Act;
- (iv) a detailed listing of all FAX machines and personal computer equipment owned and operated by your force, along with copies of the original purchase requisitions;
- (v) a detailed listing of all Workers' Compensation Board (WCB) claims involving your force, over the past ten (10) years, including those which are currently active; this information should include, for example, date/nature of injury/claim, length of claim, treatment, etc.;
- (vi) a detailed listing of all arrests made by your force over the past ten (10) years, including those to-date for 1993;
- (vii) copies of your force's current operating budget, as well as copies of budgets for the past ten (10) years;
- (viii) a copy of your force's recent annual report;
- (ix) copies of all press releases from your force, over the past twelve (12) month period;
- (x) a detailed listing of all legal challenges (civil suits, criminal actions, etc.) involving your force over the past ten (10) years; please include information on outcome of cases and settlements paid or received.

In response to the request, the Police transferred part (v) of the request to the Regional Municipality of Hamilton-Wentworth and sought clarification from the requester on the remaining nine items.

The request was clarified as follows:

- (i) a copy of the [Police]'s Position and Procedure manual;
[IPC Order M-229/December 1, 1993]

- (ii) a copy of job descriptions for all employees (both uniform and civilian) of the [Police];
- (iii) a copy of all Freedom of Information requests received by [the Police] from January 1991 to present. [The requester] stated no personal information was required;
- (iv) a detailed list of all FAX machines and personal computer equipment owned and/or operated by [the Police] including make, model and depreciation schedule or purchase requisition if available;
- (vi) statistics of all arrests made over the past ten (10) years, including those to date for 1993. [The requester] advised Stats Canada statistics would be sufficient;
- (vii) copies of operating budgets for the past ten (10) years;
- (viii) a copy of the most recent annual report;
- (ix) a copy of all press releases over the past twelve (12) months;
- (x) address and phone numbers of all courts within the Region of Hamilton-Wentworth which house all legal challenges, civil suits, criminal actions, etc. over the past ten (10) years.

Subsequently, the Police provided the requester with a fee estimate of \$11,888.20 pursuant to section 45(1) of the Act. The Police advised the requester of his right to request a waiver of the fee.

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

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

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

Section 45(4) of the Act reads, in part:

[IPC Order M-229/December 1, 1993]

A head shall waive the payment of all or any part of an amount required to be paid under this Act if, 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 disclosure of the records would benefit public health and safety. Accordingly, I find that section 45(4)(c) of the Act does not apply.

In support of his request to the Police 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 \$11,888.20 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 provincial Freedom of Information and Protection of Privacy Act, which is similar to section 45(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 their representations, the Police state:

... after taking the requester's financial situation into account, waiving all or part of the fee would force the Police Service (and in essence the taxpayers) to bear the costs of accessing the information. The question remains, would it be fair and equitable to waive the costs due to financial hardship if the burden will rest on taxpayers.

...

[The Police] have established that in order to satisfy the contents of the request, it would require one employee to devote approximately ten weeks exclusively to the processing of the request. Waiving the fee would therefore not only put an unreasonable burden of cost to the Police Service and interfere with day to day operations, but resources would also be at issue ... we have a fiscal responsibility to the taxpayers.

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 Police have attempted to respond to the appellant's request; the fact that the request involves a very large volume of records; that while the appellant clarified the scope of his request this did not result in a substantial reduction in the size of the record; 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 Police and the public, resulting in significant interference with the operations of the Police (Orders P-463, P-474 and M-166).

My conclusion, therefore, is that the decision of the Police not to waive the \$11,888.20 fee was based on fair and equitable grounds and was proper in the circumstances of this appeal.

ORDER:

I uphold the decision of the Police not to waive the fee.

Original signed by: _____
 Holly Big Canoe
 Inquiry Officer

_____ December 1, 1993