



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

ORDER P-544

Appeal P-9300251

Ministry of Health



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ORDER

The Ministry of Health (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for all information held within the Ministry's Drug Programs Branch and/or the Drug Quality and Therapeutics Committee (DQTC) files relating to a named company and/or its personnel. The request included, but was not limited to, any "company profile" held in manual or computer form.

The Ministry did not respond to the request within the thirty day time period as set out in the Act, and the requester appealed the deemed refusal as set out in section 29(4) of the Act.

The Ministry contacted the appellant to clarify his request as he did not provide the Ministry with a time frame for the records to be searched. The appellant did not limit the time frame of the search to a specific period of time. He did narrow the request to exclude correspondence to and from the named company to the Ministry. However, he wanted the Ministry to provide access to any of these documents that contained handwritten notations.

Shortly after the appeal was filed, the Ministry issued a decision in which partial access was granted to the requested records. In addition, the Ministry issued a fee estimate in the amount of \$370.20 to be paid prior to disclosure of the records. Attached to the decision letter was a form containing two notations relating to the calculation of fees. First, that \$25.20 would be charged for photocopying 126 pages; and second, that 11½ hours of manual search time would be charged at \$345.00. The form indicated that two hours of search time were not being charged.

The appellant notified the Appeals Officer that he objected to the amount of the fees. He indicated that he had sent a letter to the Ministry requesting further information with respect to the amount of search time. In his letter to the Ministry, the appellant requested that the following information be provided to him:

1. Who conducted the respective search(es);
2. On what basis was it determined whether these were the appropriate individuals to conduct the search(es), that is, were these the individuals who would know where to search to locate the records responsive to the request;
3. What areas of the Drug Programs Branch were searched; and
4. What specific files and/or cabinets and/or storage areas were searched and why.

In addition, the appellant requested that he be provided with any other information to assist him in understanding the fees charged and the adequacy of the search.

The Ministry responded to these questions by providing the appellant with the following information regarding the staff who conducted the searches, the amount of time taken by each of these individuals and the files that were searched:

Manager, Technical Services, Scientific Advisory Service (manager of the unit and responsible for the files searched):

Drug Submission Storage Room of daybooks of correspondence with manufacturers and copies of indices of files sent to government central storage: 10 hours

DQTC Co-ordinator, Scientific Advisory Service (responsible for the DQTC files and filing system):

DQTC files in the file/storage room of the Drug Programs Branch:
2½ hours

Manager, Budget and Administration and Branch Freedom of Information Program Area Co-ordinator (responsible for the central filing system):

Branch central filing system and boxes recalled by the Branch from central storage: 30 minutes

Manager, Special Projects, Scientific and Advisory Service: 30 minutes

The appellant indicated that the Ministry's response was insufficient in that it did not provide information to justify the length of time it took Ministry officials to search for records responsive to the request. The appellant is concerned, in particular, with the length of time taken by the Manager, Technical Services, Scientific and Advisory Services (the Manager) to search for the records.

Further mediation was not successful and notice that an inquiry was being conducted to review the Ministry's decision with respect to the fees charged was sent to the appellant and the Ministry. Representations were received from the Ministry only.

The sole issue in this appeal is whether the amount of the fee was calculated in accordance with section 57(1) of the Act. That section states:

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) a search charge for every hour of manual search required in excess of two hours to locate a record;
- (b) the costs of preparing the record for disclosure;

- (c) computer and other costs incurred in locating, retrieving, processing and copying a record; and
- (d) shipping costs.

Section 6 of Regulation 460 made under the Act states, in part:

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

1. For photocopies and computer printouts, 20 cents per page.
...
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 reviewing the Ministry's fee estimate, my responsibility under section 57(1) of the Act is to ensure that the amount estimated by the Ministry is reasonable in the circumstances. In this regard, the burden of establishing the reasonableness of the estimate rests with the Ministry. In my view, the Ministry discharges the burden by providing me with detailed information as to how the fee estimate was calculated, and by producing sufficient evidence to support its claim.

Since the appellant has not disputed the charge for photocopying costs, I will only consider whether the search charge is reasonable.

As its representations, the Ministry submitted two letters - one outlining in a general manner the searches that were conducted and another from the Manager specifically describing the files that she personally searched.

The Ministry indicated that information of the nature requested by the appellant can be sorted either by file number, company name, brand name or generic name of the product. The files searched were cross-referenced on this basis to ensure that all responsive records were located.

The Ministry further indicated that with respect to any one drug submission, the following documents may have been created:

- acknowledgement letters;
- notes/letters on incomplete submissions;
- letters requesting further information;
- letters to reviewers (first, second and subsequent reviews);

- DQTC reviewers/subcommittee, and committee notes and minutes;
- letters requesting more information to address committee's concerns;
- notes/letters to the branch drug testing laboratory on drug product submissions/samples;
- drug product acceptance/rejection letters to manufacturers;
- general response to manufacturers' concerns.

Although the requester indicated that the scope of the request was to be narrowed to exclude correspondence to and from the named company to the Ministry, he was still interested in receiving access to any of the correspondence that contained handwritten notes. Consequently, all of the correspondence files had to be searched.

The Manager submitted that she personally searched the following files:

- submission files for all drug products specified in the request;
- general correspondence files relating to the named company;
- records of the company's submissions placed in the Ministry's archives.

The Ministry also provided a copy of its retention schedules governing the records at issue. The schedules indicate that some of the records have a retention period of five years prior to destruction and that one specific schedule requires "... retain [records] until obsolete or superseded by more current data." The Ministry submitted that, as some of its initiatives are on-going and/or contentious, these retention time frames are not always followed and the records remain at the Branch. Accordingly, some Branch files contained records exceeding the five year retention schedule.

The Manager indicated that the submissions for three of the requested products were made in 1986 and that files for these products were still retained and searched. As files two years and older are placed in the Ministry's archives, the records sent to the archives were also searched.

In addition, the Manager indicated that the evaluation process for one product for which the formulation had been changed after the initial submission had been received, occurred over a period of four years generating large numbers of correspondence and other documentation.

In my view, taking into account all of the Ministry's representations and the nature of the request, I am satisfied that the estimated search time of 13.5 hours is reasonable in the circumstances and

is calculated in accordance with section 57(1)(a) of the Act and section 6 of Regulation 460 under the Act.

ORDER:

I uphold the Ministry's fee estimate of \$370.20.

Original signed by: _____
Anita Fineberg
Inquiry Officer

_____ September 30, 1993