



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-220

Appeal M-9300268

Kingston Police Services Board



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ORDER

BACKGROUND:

The Kingston 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 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 provided the requester with a copy of their Records Retention By-Law. This by-law outlines the types of files maintained by the Police and the time periods over which these files are retained. Pursuant to section 17(2) of the Act, the institution then asked the requester to clarify his request in view of the contents of the by-law.

In response to this correspondence, the requester clarified several aspects of his request. The amended list of records to which he then sought access is set out below:

- (i) a copy of your force's General Orders, Directives and Regulations manual;
- (ii) copies of job descriptions for all employee classifications (sworn and civilian);
- (iii) total number of personal and general Freedom of Information requests received since the inception of the Act, please provide details of request in relation to the general items;
- (iv) a listing of all fax machines, personal computers and related equipment (valued over \$100) owned/leased/rented by your force, please include make/model/purpose/purchase price and current depreciation schedules;
- (v) please cancel this section of my request pertaining to WCB claims;
- (vi) statistical information regarding charges laid/arrests made by your force, broken down by offence, over the past five (5) years, including 1993 to-date;
- (vii) a copy of your force's current operation budget, and budgets for the past five (5) years;
- (viii) as per original request;
- (ix) as per original request;
- (x) please cancel this section of my request pertaining to legal challenges -- however, could you please provide me with the names and addresses of the courts in your area that would handle cases involving your force.

Following receipt of this revised request, the Police issued a decision letter which indicated that access to some of the records requested would likely be denied under sections 8(1)(c) and (i) of the Act. The Police also advised the requester that records relating to his request for information about computer equipment did not exist and that the Police had not issued a year end report since 1976. Finally, the Police, pursuant to section 45(1)(a) of the Act, provided the requester with a fee estimate of \$2,250 to compensate for their search time and for the preparation of the relevant records. The Police also advised the requester of his right to request a waiver of the fees.

The requester subsequently sought a fee waiver from the Police on the grounds that payment would cause financial hardship to him and that the disclosure of the records could benefit public health or safety. The Police made the decision not to waive the fee and the requester appealed this decision to the Commissioner's office.

The mediation of the appeal was not successful and notice that an inquiry was being conducted was sent to the appellant and to the Police. Representations were received from the Police only. The appellant stated that the written materials which he had previously submitted both to the Police and the Commissioner's office would constitute his representations.

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

To address this subject, I will need to consider the contents of section 45(4) of the Act. This provisions states that:

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,

- (a) The extent to which the actual cost of processing, collecting and copying the record varies from the amount of payment required by subsection (1);
- (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;
- (d) any other matter prescribed in the regulations.

Section 8 of Regulation 823 made under the Act reads, in part, as follows:

The following are prescribed as matters for a head to consider in deciding whether to waive all or part of a payment required to be made under the Act:

1. Whether the person requesting access to the record is given access to it.

It has been established in a number of previous orders that the person requesting a fee waiver has the responsibility of providing adequate evidence to support a claim that such a waiver is appropriate (Orders P-476 and M-166).

In his letter of appeal, the appellant submitted that the dissemination of the records at issue will benefit public safety pursuant to section 45(4)(c) of the Act and that the payment of the \$2,250 fee would cause financial hardship to him under section 45(4)(b) of the Act.

I will address the public health and safety issue first.

In his letter of appeal, the appellant stated his position as follows:

Most certainly public health and safety would benefit from an independent review of the information to ensure proper practices, responsibility and accountability. It is my intention, along with other concerned citizens, to review the information, follow-up on any questionable or erroneous findings and make the information publicly accessible through a computerized database.

In Order P-474, I set out four factors to be considered in determining whether the dissemination of a record will benefit public health or safety under section 57(4)(c) of the provincial Freedom of Information and Protection of Privacy Act (which is the equivalent of section 45(4)(c) of the Act). These considerations are:

1. Whether the subject matter of the record is a matter of public rather than private interest;
2. Whether the subject matter of the record relates directly to a public health or safety issue;
3. Whether the dissemination of the record would yield a public benefit by a) disclosing a public health or safety concern or b) contributing meaningfully to the development of understanding of an important public health or safety issue;
4. The probability that the requester will disseminate the contents of the record.

Having reviewed the very general nature of the evidence provided by the appellant, I am unable to find that the second, third and fourth considerations contained in this list have been established. On this basis, the

appellant has not proven that the dissemination of the records at issue will benefit public health or safety. The result is that the appellant cannot rely on section 45(4)(c) of the Act to support his request for a fee waiver.

I will now address the issue of financial hardship. As part of his submissions to the Police in support of his fee waiver application, the appellant provided evidence that he has a modest income and that his monthly expenses are also modest. The appellant did not, however, supply any evidence to the Police or the Commissioner's office respecting his asset holdings or his net worth. Without this type of information, it is not possible to determine whether the appellant has the financial resources to pay the fee for which he is requesting a waiver. For the purposes of this appeal, however, I am prepared to assume without deciding the matter that an expenditure of \$2,250 to obtain the records in question would cause a financial hardship to this appellant.

Having made this initial assumption, I must now consider whether it was fair and equitable for the Police not to have waived payment of the fee in this particular case.

In Order P-474, I 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. In that order, I 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 that the Commissioner or his delegate has the statutory authority to review the correctness of that decision.

In their representations, the Police state:

In the interests of fairness the Kingston Police clearly outlined a course for [the appellant] to follow if he was serious about having the fee waived. He chose not to cooperate with the Head in the process.

In Order P-463, I set out a number of factors to be considered in determining whether it was fair and equitable for an institution not to have waived a fee under the provincial equivalent of section 45(4) of the Act. These factors were (1) the manner in which the institution attempted to respond to the appellant's request, (2) whether the institution worked with the appellant to narrow and/or clarify the request and (3) whether the institution provided any documentation to the requester free of charge. In Order P-474, I added a fourth consideration, which is whether the appellant worked constructively with the institution to narrow the scope of the request.

In Order M-166, Inquiry Officer Asfaw Seife added several additional factors to this list. These included (1) whether the request involves a very large volume of records, (2) whether or not the appellant has advanced a compromise solution which would reduce the costs of processing the request and (3) whether the waiver of the fee would shift an unreasonable burden of the cost of access from the appellant to the institution such that there would occur a significant interference with the operations of the institution.

I have carefully reflected on the applicability of these considerations to the facts of this appeal. At the outset, I would note that the scope of the original request was massive both in terms of the subject areas addressed and the time periods over which information was sought. While it is true that, at the suggestion of the Police, the appellant clarified and/or narrowed his request somewhat, what remained was still a diffuse and very broad application for information. On this basis, I am unable to conclude that the appellant worked constructively with the Police to meaningfully narrow the scope of the request. Based on my review of the file, I also believe that the Police attempted to deal with the appellant's request in a constructive and responsible fashion.

For these reasons, I find that this is not the kind of case where it would be appropriate to shift the costs of processing an access request from the requester to the institution.

My conclusion, therefore, is that the decision of the Police not to waive the \$2,250 fee was based on fair and equitable grounds and, hence, proper in the circumstances of this appeal.

ORDER:

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

Original signed by: _____
Irwin Glasberg
Assistant Commissioner

_____ November 19, 1993