



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

ORDER P-560

Appeal P-9300300

Ministry of the Solicitor General and Correctional Services



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ORDER

On September 20, 1993, the undersigned was appointed Inquiry Officer and received a delegation of the power and duty to conduct inquiries and make orders under the provincial Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act.

The Ministry of the Solicitor General and Correctional Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for a "copy of the job descriptions for all staff, including medical and nursing staff, in Ontario correctional facilities". In its decision, the Ministry informed the requester that the record was approximately 3000 pages in length and provided a fee estimate of \$600. This fee was calculated as the cost to photocopy the entire record, at \$.20 per page. The Ministry advised the requester of his right to request a waiver of the fee.

The requester did not dispute the amount of the fee estimate and provided the Ministry with representations, accompanied by supporting documentation, as to why he should be entitled to a fee waiver. After reviewing the requester's submissions the Ministry declined to waive the fee. The requester appealed the decision of the Ministry not to waive the fee.

Mediation of the appeal 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 appellant stated that he would be relying on the information he had previously provided to the Ministry, and to the Commissioner's office, as his representations.

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 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,

- (a) the extent to which the actual cost of processing, collecting and copying the record varies from the amount of the payment required by subsection (1);
- (b) whether the payment will cause a financial hardship for the person requesting the record;

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- (c) whether dissemination of the record will benefit public health or safety; and
- (d) any other matter prescribed in the regulations.

Section 8 of R.R.O. 1990, Reg. 460 states:

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.
2. If the amount of a payment would be \$5 or less, whether the amount of the payment is too small to justify requiring payment.

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

Although the requester provided information to indicate that he was in receipt of general welfare assistance, he provided no proof that this was his sole source of income. He gave no evidence of any additional assets such as a computer, facsimile machine, bank accounts, stock, bonds, life insurance, estate income, investment income, self employment earnings, etc. He gave no evidence of his expenses such as rent, food, hydro, computer hardware and software costs, facsimile equipment, and long distance costs of transmittals or other liabilities.

... the requester simply provided a general statement of welfare benefits, but provided no further details to support his request for a fee waiver and did not discharge the burden of proving that the payment of a fee would cause him financial hardship.

It has been established in a number of orders that the person requesting a fee waiver bears the burden of providing adequate evidence to support a claim that the payment of the fee would cause the individual undue financial hardship (Orders 4, 10, 111, P-425 and P-463).

The appellant argues that the fee should be waived under the Act, since payment of the fee will cause him financial hardship and that "dissemination of the record could potentially benefit

health and/or safety after [he has] reviewed all job descriptions, and made [his] findings publicly available".

The appellant provided evidence that he is the recipient of general welfare assistance and, as a result, has a modest income. 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, in my view, the appellant has not discharged the burden of proof that the payment of the fee would cause him 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 met the evidentiary burden required under section 54(4)(c) by demonstrating a connection between the disclosure of the record and a benefit to public health or safety.

I have also reviewed the remaining considerations listed in section 54(4) of the Act and in section 8 of Regulation 460 and find that none of them are applicable to the facts of this case.

Having considered the particular circumstances of this case and the representations I have received, 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: _____
Donald Hale
Inquiry Officer

_____ October 22, 1993