



Information and Privacy
Commissioner/Ontario

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

ORDER P-760

Appeal P-9400273

Ministry of Natural Resources



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NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The Ministry of Natural Resources (the Ministry) received a request for access to information concerning the transfer of jurisdiction over lands and resources to aboriginal communities. The requester also asked that any fees incurred in processing the request be waived.

The Ministry indicated that it would grant access to the majority of the records which were responsive to the request, except for certain information which was exempt from disclosure under the Act. Further, the Ministry denied the requested fee waiver and provided a fee estimate of \$950. The requester appealed the Ministry's denial of a fee waiver on the ground that payment of the fee would cause financial hardship to him.

After receiving evidence of the requester's financial situation, the Ministry offered the requester a partial fee waiver, reducing the applicable fee to \$275. The requester continued his appeal, seeking a full waiver of the fee. In this order, I will deal exclusively with the issue of whether the Ministry's decision not to grant a complete fee waiver was fair and equitable in the circumstances of this appeal. The application of the exemptions to the records and the reasonableness of the fee estimate are not at issue in this appeal.

A Notice of Inquiry was provided to the Ministry and the appellant. Representations were received from both parties.

DISCUSSION:

FEE WAIVER

Section 57(4) of the Act and section 8 of Regulation 460 under the Act set out the factors to be considered by the Ministry when a request for a fee waiver is made. Section 57(4) states, in part, that:

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;

...

- (d) any other matter prescribed in the regulations.

Section 8 of Regulation 460 then prescribes that:

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 must justify such a request. In addition, I am mindful of the Legislature's intention to include a user pay principle in the Act, as evidenced by the provisions of section 57.

The appellant has provided evidence of his financial situation. At the time of the request, the appellant was supporting himself and his two children on an educational grant while he attended a community college. The appellant indicates that, despite successfully completing his college course on land management recently, he has been unsuccessful in obtaining a job. The appellant further indicates that, while he appreciates the Ministry's gesture in reducing the fee, the payment of \$275 would still represent a financial hardship for him.

In its representations, the Ministry contends that the appellant did not meet the burden of establishing financial hardship because he did not provide information about his "future financial prospects". However, the Ministry did consider the appellant's financial circumstances in its decision to reduce the fees to \$275.

Even if I accept that payment of the reduced fee would constitute a financial hardship for the appellant, I must go on to consider whether it was fair or equitable for the Ministry **not** to have waived payment of the entire fee in this particular case.

Previous orders have set out a number of factors to be considered to determine whether a denial of a fee waiver is "fair and equitable". These factors are:

- (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;
- (3) whether the institution provided any documentation to the appellant free of charge;
- (4) whether the appellant worked constructively with the institution to narrow the scope of the request;
- (5) whether the request involves a large number of records;
- (6) whether or not the appellant has advanced a compromise solution which would

reduce costs.

In my view, a further consideration to be taken into account when deciding whether a fee waiver is fair and equitable is whether the waiver of the fee would shift an unreasonable burden of the cost from the appellant to the institution.

The Ministry submits that there are a large number of records and that it attempted to clarify the request and narrow the scope of the appeal but that the appellant refused to do so. The Ministry also states that it has reduced the fees to which it would otherwise be entitled significantly in consideration of the appellant's financial circumstances.

In response to the Ministry's request for clarification, the appellant indicated that he had formulated his request based on a particular record which he identified for the Ministry. He suggested that a review of that record might help the Ministry to understand his request. Apart from this, the appellant did not make an attempt to further clarify or narrow the scope of his request.

I have carefully considered the representations of the parties in light of the factors outlined above. I find that the Ministry, by its decision to substantially reduce the amount of its fee estimate, has made a constructive effort to treat the appellant's request in an equitable fashion. In addition, by refusing to clarify or focus his request in any meaningful way, the appellant cannot be said to have constructively worked with the Ministry to narrow the scope of the request. Finally, I find that the complete waiver of the fee in the circumstances of this appeal would shift an unreasonable burden of the cost of access from the appellant to the Ministry. I find, therefore, that the Ministry's refusal to provide a full waiver of the fees was "fair and equitable", in the circumstances of this appeal.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____ September 20, 1994 _____ Donald Hale
Inquiry Officer