



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-356

Appeal M-9400155

Metropolitan Licensing Commission



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NATURE OF THE APPEAL:

This is a fee waiver appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The appellant submitted a request to the Metropolitan Licensing Commission (the "Commission") for the complaint files in its possession regarding a construction company which performed work on the appellant's house. The Commission agreed to grant access to the majority of the records at issue. Pursuant to section 45 of the Act, the Commission also issued a fee estimate of \$152 which represented the costs of photocopying, preparation and shipping of the records. The appellant requested a fee waiver from the Commission.

The Commission responded by reducing the fee to \$76. The appellant appealed the Commission's decision not to grant a full fee waiver to the Commissioner's office.

The parties to the appeal were provided with a Notice of Inquiry and both the appellant and the Commission provided representations.

DISCUSSION:

WAIVER OF FEES

The sole issue in this appeal is whether the decision by the Commission not to waive the fee in its entirety was fair and equitable in the circumstances of this appeal.

In her notice 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 \$76 fee would cause financial hardship to her under section 45(4)(b) of the Act.

To address these issues, I must consider section 45(4) of the Act, the relevant portions of which are set out as follows:

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 previous orders that the party requesting a fee waiver has the responsibility of providing adequate evidence to support a claim that such a waiver is appropriate.

Public Health or Safety

In her representations, the appellant indicates that by obtaining access to the contractor's complaint files, the public interest would be served as the contractor would be deterred from unfair business practices by the knowledge that consumers could determine his prior complaint record.

In Order P-474, Assistant Commissioner Irwin Glasberg listed 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 find that I have not been provided with sufficient evidence to demonstrate that the dissemination of the records at issue will benefit public health or safety. The appellant cannot, therefore, rely on section 45(4)(c) of the Act to support her request for a fee waiver.

Financial Hardship

The next issue to be determined is whether the reduced fee estimate of \$76 should be waived because payment of the fee would cause financial hardship to the appellant. During the mediation stage of the appeal, the appellant was advised in writing by this office that in order to support her request for a fee waiver based on financial hardship, she should provide a list of her assets and liabilities in order to demonstrate her net worth. That information, however, was not included in the appellant's representations. Rather, the appellant provided a list of expenditures related to the costs of her civil action against the contractor plus some miscellaneous costs.

Without information related to net worth, it is not possible to determine whether payment of the fee would cause the appellant financial hardship. I am also not prepared to assume that an expenditure of \$76 to obtain the records would cause a financial hardship to the appellant. I find, accordingly, that section 45(4)(b) of the Act is not a relevant consideration in the circumstances of this appeal.

Having considered the representations received and based on the fact that the Commission has already reduced its original fee by 50%, I believe that it would **not** be "fair and equitable" to waive the remainder of the fee. I find, therefore, that the decision of the Commission not to waive the \$76 fee is fair and equitable in the circumstances of this appeal.

ORDER:

I uphold the decision of the Commission not to waive the reduced fee of \$76.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ July 20, 1994