



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

ORDER P-698

Appeal P_9300612

Ministry of Natural Resources



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ORDER

NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The appellant made a twenty part request for copies of records from the Ministry of Natural Resources (the Ministry) relating to the High Falls Dam Project, including assessment reports, environmental studies, agreements, approvals, permits and correspondence. The request was submitted by a non-profit organization that represents a small community group involved in environmental protection issues relating to Lake Nipigon. The appellant applied for a fee waiver on behalf of its client, claiming that the payment of fees would be a financial hardship.

The Ministry agreed to grant access to records responsive to eighteen parts of the request, upon payment of a fee. Clarification on the last part of the request was requested. The Ministry denied the request for waiver of the fees. The appellant appealed the decision of the Ministry not to waive the fees.

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

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

DISCUSSION:

Section 57(4) of the Act states 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;
- (c) whether dissemination of the record will benefit public health or safety; and
- (d) any other matter prescribed in the regulations.

Section 8 of Regulation 460, 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 previous orders that the person requesting a fee waiver has the responsibility to provide adequate evidence to support a claim for a fee waiver.

In its representations, the appellant indicates that payment of the fee would cause financial hardship and that dissemination of the information in the records will benefit public safety. I will consider each of these submissions individually.

BENEFIT TO PUBLIC HEALTH AND SAFETY

In Order P-474, Assistant Commissioner Irwin Glasberg set out four factors to be considered in determining whether the dissemination of the records will benefit public health and safety:

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 and 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.

I will now consider how these factors apply to this appeal.

In its representations, the appellant states that problems with the construction and operation of the dam have had an impact on the flow of the Namiwaminikan River which, in turn, may affect the mercury level in fish and, thereby, affect the health and safety of

consumers. The appellant submits that dissemination of the records and the "opportunity for study and mitigative action" will benefit public health and safety.

I have carefully reviewed the representations of the appellant. While it is clear that the appellant and its client are interested in the environmental impact on the local community, I find that there is not sufficient evidence to link this interest to the broader public interest intended by the legislation. I find that there is no evidence that the subject matter of the record (consisting of various approvals and permits for the project) relates directly to a public health or safety issue. I am not persuaded that dissemination of the record would yield a public benefit by disclosing a public health or safety concern or that it would contribute meaningfully to the development of understanding of an important public health or safety issue. Finally, the appellant has provided me with no evidence as to the probability that its client will disseminate the records or the type or method of dissemination contemplated. Therefore, in my view, the appellant has not provided me with sufficient evidence to prove that dissemination of the record will benefit public health and safety.

FINANCIAL HARDSHIP TO THE REQUESTER

In its representations, the appellant indicates that it is a legal aid clinic that provides free legal advice to the public. The appellant has provided evidence, including a financial statement for the year 1993, to show that its client is a small community group with insufficient means to pay the required fee of \$760. The appellant has not provided me with any evidence on the financial resources of the individuals comprising the community group or the financial resources available to those individuals. It is therefore not possible to assess this matter without a complete financial picture. However, for the purposes of this appeal, and based on the evidence provided, I am prepared to accept that payment of the fees would constitute a financial hardship for the appellant's client.

FAIRNESS AND EQUITY OF DECISION TO DENY WAIVER

I must now consider, notwithstanding the finding of financial hardship above, whether it was fair and equitable for the Ministry to deny the request to waive the fee.

Previous orders have established that the phrase in the opening paragraph of section 57(4) "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. A number of factors have also been identified for consideration in determining whether a denial of a fee waiver is "fair and equitable" (Order M-220).

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 very large volume of records, (6) whether or not the appellant has advanced a compromise solution which would reduce costs, and (7) whether the waiver of the fee would shift an unreasonable burden of the cost from the appellant to the institution, such that there would be significant interference with the operations of the institution.

The appellant had made an earlier request which involved the majority of the records at issue. This request was abandoned upon receipt of a fee estimate from the Ministry. The appellant then made a second request (being the subject of this appeal) for the same records plus an additional 250 pages. The Ministry requested clarification but did not receive any.

The representations of both the Ministry and the appellant indicate that the Ministry has previously provided documentation to the appellant, at which time special concessions in the fee were made. The Ministry submits that some of the records at issue are duplicates of those previously provided. The appellant states that it considered narrowing the scope of the request but was unable to do so due to the complex nature of the subject. There is a large volume of records in this appeal. The Ministry indicates that the actual fee estimate has already been reduced by \$500. There is no evidence that a compromise solution, such as removing duplicate records from the request, was advanced by the appellant to reduce costs.

In considering the factors in conjunction with the representations of the parties, I find that the Ministry has been reasonable in the manner in which it has responded to the request and that it has considered the financial resources of the appellant in accommodating the needs of the appellant. In a case such as this, I find that it is not appropriate to further shift the costs of processing an access request from a requester to the institution.

For these reasons, I find that the decision of the Ministry not to waive the fee is fair and equitable and, therefore, proper in the circumstances of this appeal.

ORDER:

I uphold the decision of the Ministry not to waive the fees.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

June 10, 1994