



Information and Privacy
Commissioner/Ontario

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

ORDER P-846

Appeal P-9400479

Ministry of Environment and Energy



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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 Environment and Energy (the Ministry) received a request from the appellant for access to the legal description of any property or properties within Northwestern Ontario where lagoon type sewer systems are located. The request also refers to two areas where the appellant believes such systems exist.

The Ministry responded with a preliminary decision to grant partial access to responsive records held by its Kenora District Office, subject to the exemption for third party information provided by section 17 of the Act. The decision indicates that the estimated fee to provide this information is \$1,227.50, and asks the appellant to pay a deposit in the amount of \$613.75.

The appellant has appealed the Ministry's fee estimate. In his letter of appeal, the appellant did not object to the Ministry's decision to respond to the request with reference to its Kenora District Office only, nor did he object to the Ministry's preliminary access decision. Accordingly, the sole issue to be decided in this order is whether the fee estimate is in accordance with the terms of the Act and the applicable regulation.

A Notice of Inquiry was sent to the appellant and the Ministry. Representations were received from the Ministry only.

DISCUSSION:

Section 57(1) of the Act reads as follows:

Where no provision is made for a charge or fee under any other Act, a head shall require the person who makes a request for access to a record to pay,

- (a) a search charge for every hour of manual search required in excess of two hours to locate a record;
- (b) the costs of preparing the record for disclosure;
- (c) computer and other costs incurred in locating, retrieving, processing and copying a record; and
- (d) shipping costs.

Section 6 of Reg. 460, R.R.O. 1990 (the Regulation), reads, in part:

The following are the fees that shall be charged for the purposes of subsection 57(1) of the Act:

1. For photocopies and computer printouts, 20 cents per page.
- ...
3. For manually searching for a record after two hours have been spent searching, \$7.50 for each fifteen minutes spent by any person.
- ...

In reviewing the Ministry's fee estimate, my responsibility under section 57(5) of the Act is to ensure that the amount estimated is reasonable in the circumstances. In this regard, the burden of establishing the reasonableness of the estimate rests with the Ministry. In my view, this burden can be discharged if the Ministry provides me with detailed information as to how the fee estimate has been calculated, and if it produces sufficient evidence to support its claim.

The Ministry's decision letter broke down the fee estimate as follows:

- | | |
|---|-------------------|
| • Search time, 39.25 hours, less two free hours
@ \$30.00 per hour | \$1,117.50 |
| • Photocopying approximately 500 pages
@ \$0.20 per page | \$100.00 |
| • Courier fees | \$10.00 |
| • TOTAL | \$1,227.50 |

In my view, given the extensive search time required, this was an appropriate case for the Ministry to follow the interim access decision and fee estimate procedure set out in Order 81, as it has done. One of the methods approved in Order 81 for calculating a fee estimate is to consult a Ministry employee who is knowledgeable about the files to which access has been requested. In this case, the Ministry consulted the District Supervisor of its Kenora District Office, where the records would be located. Given the description of this individual's history with the Ministry, as set out in the representations, I am satisfied that he is a knowledgeable individual as contemplated in Order 81, and I find that this was a proper way to arrive at a fee estimate.

In addition, the Ministry has submitted, with its representations, a list of the 103 files which would have to be reviewed to locate responsive records.

The amounts specified for search time and photocopying are consistent with the amounts allowed by the Regulation. In addition, in my view, the provisions of section 57(1)(d) would permit the Ministry to recover its courier costs.

In my view, all of the amounts estimated by the Ministry are reasonable in the circumstances and I uphold its fee estimate. If the appellant chooses to pay the requested deposit and the actual search time, number of pages to be copied, or amount of shipping charges is less than the estimate, the Ministry will be obliged to reduce its fee accordingly.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
John Higgins
Inquiry Officer

January 24, 1995