



Information and Privacy
Commissioner/Ontario

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

ORDER P-868

Appeal P-9400622

Ministry of Health



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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 appellant has requested the following records from the Ministry of Health (the Ministry):

- complete list of tendered contracts for the maintenance department of a named psychiatric hospital (the hospital) for the last three fiscal years
- complete list of untendered contracts for the hospital's maintenance department for the last three fiscal years
- complete financial details of all contracts referred to above, including amendments.

In responding to this request, the Ministry followed the procedure for a fee estimate and interim access decision set out in Order 81. The decision letter advised the appellant that some information might not be disclosed on the basis of the mandatory exemption in section 17(1) (third party information), and quoted a total fee estimate of \$705. A deposit in the amount of \$352.50 was requested.

The Ministry's decision letter also indicates that, after receipt of the deposit, the Ministry will require an extension of the time limit for responding to the request, as contemplated in section 27(1)(a) of the Act.

The letter of appeal only indicates that the appellant wishes a review of the amount of the Ministry's fee estimate, and 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:

FEE ESTIMATE

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.
- 4. For preparing a record for disclosure, including severing a part of the record, \$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 its fee estimate as follows:

21 hours search time (less two free hours) @ \$30.00 per hour	\$570.00
Photocopying charges - estimated 300 responsive pages @ \$0.20 per page	\$ 60.00
2.5 hours severing time @ \$30.00 per hour	\$ 75.00
TOTAL	\$705.00

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.

The Ministry's representations indicate that providing copies of purchase orders would be the most reasonable way to provide the requested information. To determine the cost of doing so, the Ministry consulted the hospital's Director of Plant Services, Materials Manager and Accounts Payable Clerk. Based on the information provided, I am satisfied that these individuals were "experienced employees" of the Ministry in the sense contemplated in Order 81, and I find that this was a proper way to arrive at a fee estimate.

The Ministry's representations also indicate that approximately 4,500 files would have to be searched, and the estimated search time is based upon reviewing these files at a rate of 200 per hour, or three to four files per minute. In my view, this is a reasonable assessment. Similarly, I am satisfied that the estimates for the number of responsive pages to be copied, and preparation time (described by the Ministry as "severing time") are reasonable.

The amounts charged for all items in the estimate are in accordance with the provisions of the Regulation.

Accordingly, I uphold the Ministry's fee estimate. If the appellant chooses to pay the requested deposit, and the actual search time, number of pages to be copied, or preparation time 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

_____ February 17, 1995