



Information and Privacy
Commissioner/Ontario

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

ORDER P-869

Appeal P-9400623

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):

- (1) detailed accounting of all expenses of the senior management of a named psychiatric hospital (the hospital)
- (2) detailed accounting of all expenses of the management team of the hospital
- (3) detailed accounting of all cellular phone expenses of senior management and lower level management of the hospital.

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 21(1) (invasion of privacy), and quoted a total fee estimate of \$979. A deposit in the amount of \$489.50 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:

Parts 1 and 2 of the Request (Management Expenses)

| | |
|--|-----------------|
| 12 hours search time (less two free hours) @ \$30.00 per hour | \$300.00 |
| Photocopying charges - estimated 600 responsive pages @ \$0.20 per page | \$120.00 |
| 10 hours severing time @ \$30.00 per hour | \$300.00 |
| TOTAL | \$720.00 |

Part 3 of the Request (Cellular Phone Expenses)

| | |
|---|------------------------|
| 4 hours search time | |
| @ \$30.00 per hour | \$120.00 |
| Photocopying charges - estimated 200 responsive pages @ \$0.20 per page | \$ 40.00 |
| 3.3 hours severing time | |
| @ \$30.00 per hour | \$ 99.00 |
| TOTAL | \$259.00 |
| GRAND TOTAL | <u>\$979.00</u> |

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.

With respect to Parts 1 and 2 of the request (relating to management expenses), the Ministry consulted the hospital's Financial Officer, Business Officer and the clerk responsible for processing expense claims. With respect to Part 3 (relating to cellular phone expenses), the hospital's Systems Manager and Supervisor of Telecommunications were consulted. 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 amounts specified for search time, photocopying and preparation time (referred to by the Ministry as "severing time") are consistent with the amounts allowed by the Regulation. Moreover, I am satisfied, based upon the Ministry's representations, that extensive consideration was given to the potential locations of responsive records, the number of responsive pages which are likely to exist, and the nature of the severances which would be made under section 21 of the Act. It is also clear from the Ministry's representations that a significant number of potentially responsive records were actually reviewed in preparing the estimate.

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 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