



Information and Privacy  
Commissioner/Ontario

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

# **ORDER P-857**

Appeal P-9400646

Ministry of Natural Resources



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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 Natural Resources (the Ministry) received a request for access to records related to litigation involving the unauthorized cutting of timber in an identified area. The requester indicated that, if necessary, he would elaborate on his request. He also sought a fee waiver on the basis that payment of fees would cause him financial hardship.

The Ministry provided the requester with a fee estimate in the amount of \$325.40 and noted that some exemptions might apply to the records. The Ministry denied the request for a total fee waiver. However, it sent the requester a detailed index of the 154 responsive records and invited him to indicate on the index which records he required. The Ministry advised that the fee estimate could then be adjusted accordingly.

The requester returned the index to the Ministry indicating that he sought access to 101 of the enumerated documents. He requested that the Ministry review its decision denying him the fee waiver and enclosed some documentation to support his claim based on financial hardship.

The Ministry then provided a revised fee estimate in the amount of \$145.10 and advised the requester that the costs might be further reduced if he could arrange to view the records at a Ministry office near him.

The requester then appealed the Ministry's decision seeking a full waiver of the fee. In this order, I will deal exclusively with the issue of whether the Ministry's decision not to grant a complete fee waiver was fair and equitable in the circumstances of this appeal. The possible application of the exemptions to the records and the reasonableness of the fee estimate are not at issue in this appeal.

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

## **DISCUSSION:**

### **FEE WAIVER**

Section 57(4) of the Act and section 8 of Regulation 460 under the Act set out the factors to be considered by the Ministry when a request for a fee waiver is made. Section 57(4) states, in part, that:

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,

...

- (b) whether the payment will cause a financial hardship for the person

requesting the record;

...

(d) any other matter prescribed in the regulations.

Section 8 of Regulation 460 then prescribes that:

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 a number of previous orders that a person requesting a fee waiver must justify such a request. In addition, I am mindful of the Legislature's intention to include a user pay principle in the Act, as evidenced by the provisions of section 57.

The appellant has provided some evidence of his financial situation. In his submissions, he states that he is supporting himself and his two young children on an education grant while he attends a community college. He indicates that the grant monies provide him and his family with sufficient resources to just cover their basic living expenses. Consequently, he claims that even the reduced fee of \$145.10 would represent a financial hardship for him. The appellant provided the Ministry with a copy of his Grant Certificate to support his claim.

The Ministry contends that the appellant has not discharged the burden of establishing financial hardship as he did not provide any evidence of his "future financial prospects". Nonetheless, the Ministry indicates that it did consider the appellant's financial situation and attempted to accommodate him. Thus, it appears that the Ministry was prepared to accept that an expenditure of \$145.10 would cause the appellant financial hardship and then went on to consider whether it was "fair and equitable" to waive the fee. Accordingly, I will now determine whether it was fair and equitable for the Ministry **not** to have waived the payment of the fee in this particular case.

Previous orders have set out a number of factors to be considered to determine whether a denial of a fee waiver is "fair and equitable". 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 large number of records;
- (6) whether or not the appellant has advanced a compromise solution which would reduce costs.

In my view, a further consideration to be taken into account when deciding whether a fee waiver is fair and equitable is whether the waiver of the fee would shift an unreasonable burden of the cost from the appellant to the institution.

The Ministry submits that it considered several of these factors to determine whether a fee waiver was fair and equitable in the circumstances. It indicates that the wording of the request was broad and that it attempted to narrow the scope by providing the appellant with the index of records. The Ministry acknowledges that the appellant co-operated by identifying the records he wanted, but notes that there are still a large number of records required by the appellant. The Ministry also states that by proposing that the appellant view the records in a local Ministry office, it was offering the appellant a compromise solution to assist him in further reducing the costs.

I have carefully considered the representations of the parties in light of the factors outlined above. The Ministry prepared a detailed index of all the responsive records as it is required to do according to the IPC Publication Practices - Drafting a Letter Refusing Access to a Record. This effort resulted in the appellant narrowing the scope of his request. By these actions, both the Ministry and the appellant made constructive efforts to work together to deal with the request in a fair and equitable manner. Then the Ministry proffered a further solution to reduce the costs by offering to arrange to have the appellant view the records. The appellant did not respond to this offer which, by my calculation, could have resulted in a saving of the photocopying charges for 119 pages, had the appellant merely viewed these records and not requested copies. (The Ministry estimated that severances were required for approximately 94 of the 213 requested pages and, for this reason, photocopying costs would be charged for these.)

Based on all these factors, I find that the complete waiver of the fee in the circumstances of this appeal would shift an unreasonable burden of the cost of access from the appellant to the Ministry. I find, therefore, that the Ministry's refusal to provide a full waiver of the fees was "fair and equitable" in the circumstances of this appeal.

**ORDER:**

I uphold the decision of the Ministry.

Original signed by: \_\_\_\_\_  
Anita Fineberg

February 6, 1995

Inquiry Officer