



Information and Privacy
Commissioner/Ontario

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

ORDER P-865

Appeal P-9400585

Ministry of Finance



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The Ministry of Finance (the Ministry) received a request for access to information relating to the dispute resolution procedures and policies of the Ontario Insurance Commission and training materials for arbitrators and mediators.

The Ministry identified the Dispute Resolution Practice Code (the Code) and training materials for arbitrators and mediators as records responsive to the request and indicated that access would be granted in full. The Ministry also provided a fee estimate of \$72.10 for preparation and photocopying of records and shipping costs.

The requester asked the Ministry for a fee waiver on the basis of financial hardship, however he did not provide documentation to support his claim. The Ministry denied his request and the requester appealed this decision.

During mediation, the Appeals Officer contacted the Ministry, on behalf of the appellant, to advise that the appellant did not wish to receive a copy of the Code as he was already in possession of a copy. The Ministry was asked to amend its fee estimate accordingly, which it refused to do.

The Ministry was further advised that the appellant was prepared to provide financial information if it would reconsider its decision. The Ministry refused to reconsider its position as, in its view, it would not be fair and equitable to waive the fee in the circumstances of this case.

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 a "physically challenged" person. He indicates that he relies on disability pensions as his sole source of income, which is just sufficient to cover his living expenses. Consequently, he claims that a fee of \$72.10 would represent a financial hardship for him.

The Ministry contends that the appellant has not discharged the burden of establishing financial hardship as he did not provide any evidence with his initial request. The Ministry then provides details of its extensive background with the appellant, as well as some further evidence relating to his financial situation. The Ministry indicates that, because of its intimate knowledge of the appellant, it was of the view that financial hardship had not been established.

The Ministry further argues that, even if it were prepared to accept that an expenditure of \$72.10 would cause the appellant financial hardship, it would find that it was not "fair and equitable" to waive the fee.

I have reviewed the representations of the parties and have considered the appellant's financial situation in light of the information provided by himself and the Ministry. In my view, the appellant has failed to provide sufficient evidence to support a claim for a fee waiver on the basis of financial hardship. It is, therefore, not necessary for me to consider whether it was fair and equitable for the Ministry **not** to have waived the payment of the fee in this particular case.

During mediation and in his representations, the appellant has indicated that he does not wish to receive a copy of the Code. Accordingly, the Ministry's decision should be amended to reflect a corresponding reduction in fees.

ORDER:

1. I order the Ministry to amend its fee estimate to exclude the cost of providing a copy of the Code to the appellant.

2. I otherwise uphold the Ministry's decision not to grant a fee waiver.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the Ministry to provide me with a copy of the revised fee estimate which is provided to the appellant pursuant to Provision 1.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ February 14, 1995