



Information and Privacy  
Commissioner/Ontario  
Commissaire à l'information  
et à la protection de la vie privée/Ontario

# ORDER M-683

Appeal M\_9500323

London Police Services Board



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## NATURE OF THE APPEAL:

The London Police Services Board (the Police) received a request for access to copies of the statistical reports provided by the Police to the Office of the Information and Privacy Commissioner under section 26 of the Municipal Freedom of Information and Protection of Privacy Act (the Act) for the years 1993 and 1994. The Police located the records responsive to the request and indicated that access would be granted upon payment of a fee of \$4.40 to cover the cost of photocopying and postage. The requester asked that the fee be waived and the Police declined to do so. The requester appealed this decision.

A Notice of Inquiry was provided to the appellant and the Police setting out the provisions of the Act and Regulations which govern the issuance of the fee waivers. Representation were received from both parties. In addition, the parties, by agreement, have exchanged their representations and provided comments by way of rebuttal.

## DISCUSSION:

### **FEE WAIVER**

I find that the Police are entitled to charge a fee for photocopying and mailing the requested records. I must now determine whether the decision of the Police not to waive the fee was fair and equitable based on the criteria set out in section 45(4) of the Act.

Section 45(4) of the Act and section 8 of Regulation 517/90 made under the Act set out the factors to be considered by the Police when determining whether it is "fair and equitable" to waive a fee where such a request is made. Section 8 states that, in deciding whether to waive all or part of a fee, the institution **must** consider, where the fee is less than \$5, whether the amount of the fee is "too small to justify requiring payment".

In Order M-561, I found that as a general rule, in situations where a waiver is requested for a fee which is under \$5, an institution should balance the administrative expense incurred in refusing such a request against the value of collecting the payment.

In this appeal, the Police indicate that they considered the small amount of the fee as one factor, among others, in deciding not to grant the fee waiver. The Police submit that they "have carefully weighed the administrative expense incurred versus the value of collecting fees under \$5 and have concluded that it is financially feasible to do so". In Appendix A to their representations, the Police have prepared a chart demonstrating 27 situations from January 1, 1995 to August 31, 1995 where fees of less than \$5 were collected from requesters.

The Police also refer to the fact that they considered whether the appellant's request amounted to an abuse of process, in light of the fact that he had made three other requests during the year 1995. I cannot agree that this is a relevant consideration in the circumstances. In my

view, the fact that this requester has made four requests over the course of a year to one institution cannot be characterized as a course of conduct which could reasonably be considered an abuse of process.

None of the factors listed in section 45(4) have any practical application in the circumstances of this appeal. The sole consideration prescribed by section 8 of Regulation 517/90 which is relevant in the present appeal requires that the head consider whether the amount of the payment is too small to justify requiring payment. In my view, the head did not give this consideration the appropriate weight which the statute accords to it. Rather, other irrelevant or inappropriate considerations entered into the head's decision and led to the determination that it would not be fair and equitable to waive the fee in this situation.

The standard of review which applies to a review by the Commissioner or his delegate of a decision issued under section 45(4) is one of correctness. I find that, in the circumstances of this appeal, it would be fair and equitable within the meaning of section 45(4) for the Police to waive the fee and that the head's decision not to do so was incorrect.

**ORDER:**

1. I order the Police to waive the fee in this appeal and disclose the requested records to the appellant by February 25, 1996 from the date of this order.
2. In order to verify compliance with this order, I reserve the right to require the Police to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: \_\_\_\_\_

Donald Hale  
Inquiry Officer

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January 10, 1996