



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

ORDER P-1192

Appeal P-9500709

Ministry of the Attorney General



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NATURE OF THE APPEAL:

The Ministry of the Attorney General (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for information on the 1993, 1994 and 1995 assessment appeals for all properties in Metropolitan Toronto. The requester indicated that he would accept the information in either a computer disk or print format. In response to this request, the Ministry issued a fee estimate of \$1,633 and required a deposit of \$815. The requester subsequently revised the scope of his request by excluding properties in East York, Scarborough and Etobicoke. He provided the required deposit.

In its second decision letter, the Ministry revised its fee estimate in accordance with the reduced scope of the request and advised the requester that the total cost estimate was reduced to \$982.27. The Ministry then advised the requester that the information was available at the offices of the Assessment Review Board (the ARB) for pick-up or delivery.

Prior to the requester taking delivery of the paper copies of the requested information, he contacted the Ministry regarding obtaining the requested information on computer tape. The Ministry suggested that the requester contact the Co-ordinator of Systems at the ARB to see if this was possible. The ARB determined that it could produce a computer tape although it could not guarantee that the tape would be compatible with the appellant's system.

As a result of these discussions, the Ministry agreed to provide a computer tape of the information to the requester at a cost of \$773.76 plus a \$25 deposit fee. The requester paid this amount and the Ministry returned the original deposit cheque for \$815. The Ministry also delivered a computer tape of the requested information to the requester.

The appellant appealed the fee charged by the Ministry for providing the computer tape. The sole issue in this appeal is whether the fee charged by the Ministry is authorized in section 57(1) of the Act and section 6 of Regulation 460.

This request and appeal were both filed prior to the enactment of Bill 26, which changed the fee structure of the Act. My decision in this appeal will be made under the statutory and regulatory provisions in force at the time the request and appeal were filed.

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

DISCUSSION:

CALCULATION OF FEES

At the time of the appellant's request, section 57(1) of the Act read 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 Regulation 460 provided:

The following are the fees that shall be charged for the purposes of section 57(1) of the Act:

1. For photocopies and computer printouts, 20 cents per page.
2. For floppy disks, \$10 for each disk.
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.
5. For developing a computer program or other method of producing a record from machine readable record, \$15 for each fifteen minutes spent by any person.
6. For any costs, including computer costs, incurred by the institution in locating, retrieving, processing and copying the record if those costs are specified in an invoice received by the institution.

In his representations, the appellant indicates that he was told that the programme to retrieve the requested material was available and that the data only needed to be transferred to the tape. In support of his position, the appellant submitted a letter from his computer consultant regarding his estimate of the time required to produce the tape. In his assessment, the consultant made a number of assumptions and based his estimate only on the amount of expert time required to produce the tape. According to his estimate, the total time would probably be no longer than one hour.

The appellant refers to Regulation 460 and indicates that under section 6 (point 4), the maximum fee should only be \$30 based on a processing time of one hour.

The appellant also indicates that he was advised by Ministry staff that the fee for producing the tape was calculated on a per entry basis (that is, a separate charge for each assessment appeal included in the record), and that this is an inappropriate criterion under section 57(1) and section 6 of Regulation 460.

The Ministry states that at no time was the appellant advised that the fee was calculated on a per entry basis. Rather, the fees charged represent the actual cost of producing the tape. In this regard, the Ministry sets out in table format, the costs associated in producing the tape. The table breaks down the computer processing job into its component parts, and includes, Job Number, CPU costs, Input/Output costs, Software licencing costs and Operator costs.

The Ministry indicates that the tape was produced at the Toronto Production Centre (the Centre) which is a part of Management Board Secretariat (MBS). The Ministry explains that it does not have the capabilities of maintaining this type of computer system, and that the ARB database is located in the Centre's mainframe computer. This ministry, as do many others, regularly uses the resources which are available at the Centre. The Ministry indicates that MBS sends its billings to the user ministries which is based on an agreed upon pricing schedule.

According to the Manager of Operations Support at the Ministry's Computer and Telecommunications Services Branch (the Manager), MBS sends the Ministry a monthly invoice for processing services, which represents the total billing to the Ministry for that month. The Manager indicates that although specific job information is not attached to the invoice, MBS maintains statistical information relating to its computer processing. Upon request, MBS will provide a summary and detailed breakdown of specific job costs to support the amount in the invoice.

In the current appeal, the Manager contacted MBS to request the cost breakdown in preparing the tape for the appellant. This amount was provided to the appellant as the cost incurred by the Ministry in locating, retrieving, processing and copying the record.

Section 6 (point 6) of Regulation 460 provides that these costs may be recovered in full if they are specified in an invoice received by the institution. In the circumstances of this appeal, I am satisfied that the requirements of this section have been met and the fee charged by the Ministry is provided in accordance with the fee provisions of the Act.

ORDER:

I uphold the Ministry's decision regarding the fees charged.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ May 28, 1996