



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

ORDER P-1286

Appeal P-9600269

Ministry of Community and Social Services



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NATURE OF THE APPEAL:

The appellant submitted a request to the Ministry of Community and Social Services (the Ministry) under the Freedom of Information and Protection of Privacy Act (the Act). The request pertains to the Social Contract Act, and was directed to the Administrator at the appellant's place of employment (the Centre). In particular, the appellant sought:

1. copies of all information related to the standard procedure to be followed for the usage of unpaid social contract days for both bargaining unit and management personnel received from October 7, 1993 to the present;
2. copies of all payroll sheets prepared, authorized and used on the appellant's behalf for salary payment purposes from October 7, 1993 to the present;
3. the coding key, with an explanation of the notations, for all items contained on the payroll sheets related to the appellant as cited in #2 above; and
4. a copy of the relevant section or sections of the Social Contract Act which were used as the basis for the Administrator's decision and direction rendered to the appellant about her unused social contract days.

The Ministry located records responsive to the request and granted access to them, conditional on the acceptance by the appellant of a fee estimate of \$504.34. This fee estimate was broken down by the Ministry as follows:

Search time		
13.25 hrs @ \$7.50 per 1/4 hr	..	397.50
Photocopying		
500 pages @ \$0.20 per page	..	100.00
Shipping	..	6.84
TOTAL		<u>\$504.34</u>

The appellant was required to pay a deposit of \$252.17 immediately, the balance to be paid upon completion of the processing of the request.

The appellant appealed the Ministry's decision to charge a fee for the requested information on the basis that this information is of a personal nature and directly impacts on her. The appellant indicates that she is a civil servant employed by the Government of Ontario and that issues surrounding reimbursement for the unused portion of her social contract days is the subject of a grievance which was scheduled to be heard by the Grievance Settlement Board in July, 1996.

A Notice of Inquiry (the NOI) was provided by this office to the Ministry and the appellant. This NOI only raised the issues relating to the charging of fees by the Ministry. Upon further review, it became apparent that the information in question may deal with labour relations matters. Pursuant to recent amendments to the Act, if section 65(6) applies to the records in question, the Act will not apply to them. If this were the case, the Commissioner's office would

have no jurisdiction to deal with any issues arising in the context of this request. Therefore, a supplemental NOI was sent to the parties which asked them to address the application of section 65.

The Ministry submitted representations in response to both NOI's.

PRELIMINARY MATTER:

DOES SECTION 65(6) APPLY TO THE RECORDS?

Section 65(6) of the Act provides:

Subject to subsection (7), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:

1. Proceedings or anticipated proceedings before a court, tribunal or other entity relating to labour relations or to the employment of a person by the institution.
2. Negotiations or anticipated negotiations relating to labour relations or to the employment of a person by the institution between the institution and a person, bargaining agent or party to a proceeding or an anticipated proceeding.
3. Meetings, consultations, discussions or communications about labour relations or employment-related matters in which the institution has an interest.

In its representations in response to the supplementary NOI, the Ministry provided copies of the records responsive to this request and indicated that none of these documents relate in any way to the provisions of this section.

While the context in which the appellant submitted her request would suggest that some (at least) of the records may fall within the scope of section 65(6), I am satisfied that the section has no application in the circumstances of this appeal. In my view, the Ministry is in the best position to identify the manner in which the records were collected, prepared, maintained or used. Further, the Ministry's supplementary representations, dated September 17, 1996, were prepared well after the scheduled date of the hearing before the Grievance Settlement Board, and would therefore, have been made with full awareness of what was actually prepared or used "in relation to" the grievance proceedings. Accordingly, I accept the Ministry's representations on this issue and I find that section 65(6) does not apply.

DISCUSSION:

CALCULATION OF FEES

The sole remaining issue in this appeal is whether the Ministry's fee estimate is authorized in the Act and Regulation 460. Section 57(1) of the Act and accompanying regulations dealing with fees, were amended in February 1996 by the Savings and Restructuring Act (Bill 26). The request and appeal in this case were both initiated subsequent to these amendments and are, accordingly, subject to the fee provisions as amended. Section 57(1) states:

A head shall require the person who makes a request for access to a record to pay fees in the amounts prescribed by the regulations for,

- (a) the costs of every hour of manual search required 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;
- (d) shipping costs; and
- (e) any other costs incurred in responding to a request for access to a record.

Sections 6 and 6.1 of Regulation 460 (as amended by Regulation 21/96) provide:

6. The following are the fees that shall be charged for the purposes of subsection 57(1) of the Act for access to a record:
 1. For photocopies and computer printouts, 20 cents per page.
 2. For floppy disks, \$10 for each disk.
 3. For manually searching a record, \$7.50 for each 15 minutes spent by any person.
 4. For preparing a record for disclosure, including severing a part of the record, \$7.50 for each 15 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 15 minutes spent by any person.

6. The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the record if those costs are specified in an invoice that the institution has received.
- 6.1 The following are the fees that shall be charged for the purposes of subsection 57(1) of the Act for access to personal information about the individual making the request for access:
 1. For photocopies and computer printouts, 20 cents per page.
 2. For floppy disks, \$10 for each disk.
 3. For developing a computer program or other method of producing the personal information requested from machine readable record, \$15 for each 15 minutes spent by any person.
 4. The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the personal information requested if those costs are specified in an invoice that the institution has received.

Section 57(1) provides the general framework for the calculation of fees. The specific fees allowable under the Act for those activities itemized in section 57(1) are set out in Regulation 460. It is clear that sections 6 and 6.1 of Regulation 460 distinguish between personal information relating to the requester and general records. In particular, while section 6 prescribes the allowable fees for search and preparation time with respect to general records, reference to these activities is absent in section 6.1. Accordingly, the Ministry cannot charge the appellant for these activities if the records contain her personal information.

As I noted above, the Ministry has charged the appellant for search time, photocopying and shipping costs. As a preliminary step in determining whether the Ministry's calculation of fees in this appeal is appropriate, I must determine whether the requested records contain the appellant's personal information.

Personal Information

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual.

I have reviewed the records responsive to the appellant's request, and have described them generally below as they relate to each of the four parts of the request. I have also set out my findings with respect to the records responsive to each part.

1. Records responsive to part 1 of the request.

There are 248 pages of records responsive to part 1 of the request. These records consist of internal Ministry records relating to the implementation and administration of the Social Contract Act, and include interpretation bulletins, logistics bulletins, memoranda between Human Resource staff and Ministry managers, and material relating to the agreement between the government and OPSEU concerning the social contract days. I find that none of the records responsive to this part contain personal information.

2. Records responsive to part 2 of the request.

The 84 pages of records responsive to this part of the request consist of the appellant's payroll sheets and credit summary sheets from October 7, 1993 to June 30, 1996. I find that all of the records responsive to this part contain the appellant's personal information.

3. Records responsive to part 3 of the request.

The records responsive to part 3 consist of 25 pages of administrative documents pertaining to attendance matters. These records include a list of Attendance Codes, and two sections of the Central Attendance Reporting System (CARS) manual. None of the information in these records qualifies as personal information.

4. Records responsive to part 4 of the request.

Two documents (containing 31 pages in total) have been included as responsive to part 4 of the request. They consist of a copy of Bill 48, "An Act to encourage negotiated settlements in the public sector to preserve jobs and services while managing reductions in expenditures and to provide for certain matters related to the Government's expenditures reduction program", and "A Guide to the Social Contract", published by the Ministry of Finance in July, 1993. Neither of these documents contain personal information.

To summarize, I have found that the records responsive to parts 1, 3 and 4 of the request do not contain personal information. Accordingly, the Ministry is entitled to charge the fees as outlined in section 6 of Regulation 460. However, I have found that those records responsive to part 2 do contain the appellant's personal information, and therefore, the applicable fees should be calculated in accordance with section 6.1 of Regulation 460.

In reviewing the Ministry's fee estimate, my responsibility under section 57(5) of the Act is to ensure that this amount is reasonable in the circumstances. In this regard, the burden of establishing the reasonableness of the fee estimate rests with the Ministry. The Ministry discharges this burden by providing me with detailed information as to how the fee estimate has been calculated and by producing sufficient evidence to support its claim.

In its representations, the Ministry acknowledges that records responsive to part 2 contain the appellant's personal information and have described the steps taken in calculating the fees for each category.

Search time

With respect to general records, the Ministry indicates that there is extensive documentation relating to Social Contract Days and the implementation of the Social Contract Act at the Centre, and that, in order to respond to part 1 of the request, it was necessary to review all of the records at the Centre to determine responsiveness. This amounted to a review of approximately 4000 pages.

The Ministry provided an itemized account of logged time for the manual search of the records responsive to part 1 (which amounted to 12.75 hours) as well as for the time required to locate records responsive to parts 3 and 4 (1/4 hour for each part).

The Ministry indicates that the appellant was not charged for the 3.50 hours it took to locate records containing her personal information.

I accept that the estimated search time described by the Ministry in its decision letter is reasonable in the circumstances of this appeal.

Photocopying

The Ministry indicates that at the time the fee estimate was prepared, it was estimated that approximately 500 pages would be copied. The exact number of pages is now known to be 388. Accordingly, at a charge of \$0.20 per page, the fee for photocopying is \$77.60. The recent amendments to the Act provide for the collection of fees for photocopying records that contain personal information. Accordingly, I find that the Ministry's decision to charge a fee of \$0.20 per page for photocopying is in accordance with the provisions of Regulation 460.

Shipping

The Ministry indicates that the cost of shipping the package of 388 pages to the appellant is \$6.84. The provisions of section 57(1)(d) permit the Ministry to recover the costs of shipping the records to the appellant, and I uphold the Ministry's decision to include this charge. However, should the amount of shipping charges be less than the estimate, the Ministry will be obliged to reduce its fee accordingly.

In summary, I uphold the Ministry's fee estimate insofar as it relates to search time and shipping costs. I find that the Ministry should adjust its fee estimate for the processing of this request as follows:

Search Time		
13.25 hours @ \$30 per hour	..	397.50
Photocopying		
388 pages @ \$0.20 per page	..	77.60
Shipping	..	<u>6.84</u>
TOTAL	..	\$481.94

ORDER:

1. I order the Ministry to provide the appellant with an amended fee estimate in accordance with the guidelines described above by sending it to her by **November 18, 1996**.
2. Upon receipt of the payment of the fee by the appellant, I order the Ministry to disclose all of the information contained in the responsive records.
3. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of its revised fee estimate.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ November 4, 1996