



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1296

Appeal P-9600298

Ministry of Transportation



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NATURE OF THE APPEAL:

The Ministry of Transportation (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to “a listing of all vanity plates in alphabetical and numerical order”. The Ministry initially denied access to this information under section 21 of the Act (invasion of privacy). It then revised its decision, advising the requester that access to the requested information would be provided in full, upon payment of a fee of \$2087, plus royalties.

The requester (now the appellant) appealed the Ministry’s decision on the basis that the estimated fee was excessive. The Ministry revised its fee estimate by advising the appellant that royalties would not be charged. The appellant indicated his wish to continue with the appeal.

A Notice of Inquiry was provided to the Ministry and the appellant by this office. Representations were received from both parties. The sole issue to be determined in this appeal is whether the Ministry’s fee estimate of \$2087 is authorized by the Act and the Regulations made thereunder.

DISCUSSION:

FEE ESTIMATE

Section 57(1) of the Act and Regulation 460, each 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.

Section 6 of Regulation 460 (as amended by Regulation 21/96) provides:

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.

The Ministry indicates that because the requested list of "own choice" or "vanity" license plates does not exist, it will be necessary for the Ministry to develop a computer program to extract the information. It also indicates that since the information resides on a mainframe computer system and the data is in EBCDIC form and is compressed, it will require some programming to extract and prepare it into a readable format for the requester. There have been approximately 382,000 own choice plates issued by the Ministry to-date.

In its representations, the Ministry has provided a breakdown of the estimated fees as follows:

• programmer/operator time - 25.5 hours x \$60 per hour	\$1530
• production run	500
• computer disk cartridge	30
• shipping and handling	27
	<hr/>
	\$2087
TOTAL	=====

The appellant has suggested a number of ways which, in his view, will enable the Ministry to extract the requested information quickly and at less cost. These suggestions would not require the creation of a new program to retrieve the information, rather, they involve the transfer of the information on the Ministry's mainframe computer into a EBCDIC text file which could then be converted to a ASCII delimited DOS-based text file. The appellant also suggests that this is possible by using a "Select SQL" or similar command using the query language which exists in most computer platforms. The appellant further advises that the information need not be provided in a hard copy format and that he would be satisfied with receiving access to the information in an ASCII delimited text file readable on a DOS diskette.

With the consent of the appellant, our office provided the Ministry with a copy of the suggestions made by the appellant which he believes might facilitate a less-expensive approach to responding to the request. The Ministry revised its fee estimate after taking into account the modifications to the original request. It indicates that the amount of programmer/operator time necessary to complete the search should be reduced from 25.5 hours to 21.75 hours. The fee estimate was reduced, therefore, to \$1862.

The Ministry advises that SQL/Select cannot be used to access the requested information because it is stored in a "flat file" in a Fast Path IMS Vehicle database as opposed to a DB2 Relational Database. For this reason, the Ministry submits that it will still require programming and operator time to create the necessary program which will allow it to retrieve the requested information.

Pursuant to my authority under section 52(4) of the Act to conduct an inquiry, I have also solicited and received independent evidence relating to the appropriateness of each of the components of the Ministry's fee estimate. I have been advised, that the necessary extract program which would be required to access the information held in the Ministry's flat file records could be written in 100 to 200 lines of code. I am further advised that this program would then step through each of the flat file records, match the selected criteria ("own choice license plates") and write the information out to another new file. It is this extract file which is the subject of the appellant's request. I am also advised that the time required to create such an extract program by a programmer trainee would be approximately three hours.

Programmer Time

As noted above, paragraph 5 of section 6 of Regulation 460 (as amended) allows a charge of \$15 for each 15 minutes incurred by the Ministry for developing a computer program. I am not satisfied that the fee estimate for this item quoted by the Ministry is reasonable. I accept the independent evidence which I have obtained that suggests that a reasonable time for the creation of the required extract program would be three hours. I am prepared, therefore, to find that the amount of \$180 is a reasonable fee for programming time spent in creating the necessary program to extract the information requested from the Ministry's database.

Production Run/ Operator Time

Section 6 of Regulation 460 does not specifically provide for a fee to be charged for a "production run". It does, however, allow a charge of \$15 for each 15 minutes spent by any person for developing a computer program **or other method of producing a record from machine readable records** (emphasis added). The Ministry has not provided any details concerning what this charge is based on or what the "production run" might entail.

It is my understanding that a "production run" involves scheduling and running the program on the mainframe computer which contains the requested information, as well as installing any media required by the program (such as a cartridge). All of these tasks are performed by a computer operator, who would not necessarily be the same individual who wrote the extract program. In my view, the operator is instrumental in the process of "producing a record from machine readable records" and the time spent by this individual in preparing for the production

run of the necessary program on the mainframe computer fall within the parameters of section 6 of Regulation 460. I am advised that the actual time which would be required for the operator to accomplish this task is, however, minimal. I find, accordingly, that one hour is a reasonable amount of time for this portion of the work.

Cartridge Charge/Shipping and Handling

I am satisfied that these charges included in the fee estimate fall within the list of items described in section 6 of Regulation 460 for which a fee may be charged. I find that the Ministry's decision with respect to this portion of the fee estimate is reasonable.

By way of summary, I find that the Ministry should adjust its fee estimate for the processing of this request as follows:

•	programmer time - 3 hours x \$60 per hour	\$180
•	operator time - 1 hour x \$60 per hour	60
•	computer cartridge	30
•	shipping and handling	27
	TOTAL	<u>\$297</u>
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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 him by **December 9, 1996**.
2. 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.
3. Upon receipt of the payment of the fee by the appellant, I order the Ministry to disclose the requested information in the format requested.

Original signed by: _____
Donald Hale
Inquiry Officer

November 20, 1996