



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

ORDER P-1365

Appeal P_9600443

Ministry of Community and Social Services



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:

The Ministry of Community and Social Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act). The appellant sought access to information relating to the frequency of the use of mechanical restraints on patients at the Southwestern Regional Centre (the SRC), a facility for developmentally handicapped individuals operated by the Ministry, in the year 1995/96. The appellant is a former employee of the SRC who had received similar information from the Ministry free of charge for the year 1994/95.

The Ministry located certain information which it felt was responsive to the request and made it available to the public, including the appellant, as part of its "routine disclosure" policy. The appellant indicated that the information requested was not reflected in the information which was disclosed, and appealed the Ministry's decision. With the assistance of an Appeals Officer from this office, the parties clarified that the reason for the discrepancy lies in the fact that the Ministry compiled statistics at the SRC in the year 1995/96 in a manner different from that which was used in 1994/95, using a different definition of the term "mechanical restraint".

The Ministry then undertook a further search of its records for information about the use of mechanical restraints, using the same definition which was used during the compilation of the 1994/95 statistics. It then provided the appellant with a fee estimate in the amount of \$2250, comprising 75 hours search time at \$30 per hour. The appellant appealed the Ministry's decision on the basis that the fee is unreasonable and requested that the Ministry waive the fee, which it refused to do. The appellant appealed this aspect of the Ministry's decision, as well.

A Notice of Inquiry was provided to the appellant and the Ministry soliciting the submissions of the parties on the issues of the reasonableness of the fee estimate and the appropriateness of the Ministry's decision not to grant the appellant a fee waiver. Representations were received from the Ministry only.

DISCUSSION:

CALCULATION OF THE FEE

The first issue to be determined is whether the Ministry's fee estimate of \$2250 is calculated in accordance with the Act and the Regulations made thereunder. Section 57(1) of the Act and Regulation 460, each dealing with fees, were amended in February 1996 by the Savings and Restructuring Act. 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 submits that its fee estimate was calculated as follows:

- manual search time 75 hours x \$30 per hour = \$2250

The Ministry indicates that the search required to locate the information requested by the appellant took place in each of the 25 residential areas, containing between 17 and 25 residents, within the SRC. The Ministry indicates that in order to locate the information requested, it was necessary to search each individual resident's file. The searches for each of the 25 residential areas required three hours, for a total of 75 hours.

The appellant maintains that the search could have been conducted in less time, using mechanical restraint records which are maintained separately from those of each resident. I find,

however, that these separately maintained records are compiled based on a different definition of "mechanical restraint" from that upon which the appellant has based his request. In my view, in order to compile the statistical information sought by the appellant, a search of each individual resident's file was required. I am satisfied, therefore, that the Ministry's fee estimate for the search time required to locate the information requested was reasonable.

FEE WAIVER

The appellant submits that the requirement for the payment of a fee in the circumstances of this appeal should be waived under sections 57(4)(b) and (c) of the Act. These sections read:

A head shall waive the payment of all or any part of an amount required to be paid under subsection (1) if, 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;
- (c) whether dissemination of the record will benefit public health or safety;

It has been established in a number of previous orders that the person requesting a fee waiver must justify the request and demonstrate that the criteria for a fee waiver are present in the circumstances (Orders 10, 111, P-425, P-890, P-1183 and P-1259). I am also 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 not, however, provided the Ministry or this office with any information regarding his present financial situation; nor has he made reference to any public health or safety benefits which may result from the dissemination of the information.

I find that the appellant has not established that it would be fair and equitable for the fee to be waived in this particular case, either on the basis that the payment of a fee would cause him a financial hardship or that the dissemination of the record would benefit public health or safety.

ORDER:

I uphold the Ministry's fee estimate and its decision to deny the appellant a fee waiver.

Original signed by: _____
Donald Hale

March 12, 1997

Inquiry Officer