



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

ORDER M-914

Appeal M_9700014

Municipality of the Townships of Sherwood, Jones and Burns



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NATURE OF THE APPEAL:

The appellant submitted a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the Municipality of the Townships of Sherwood, Jones and Burns (the Townships) for access to “a complete run-down of all Revenues and Expenditures” of the Townships’ Recreation Committee for the year ending December 31, 1995. The appellant requested this information because of alleged inconsistencies in the Financial Report of the Townships’ Recreation Committee.

The Townships issued a fee estimate in the amount of \$1650. The appellant appealed the amount of the fee estimate to this office and Appeal Number M-9600206 was opened. In Order M-858, Inquiry Officer Donald Hale disposed of the issues in that appeal. He did not uphold the amount of the fee estimate, but rather found that a reasonable fee for the processing of the appellant’s request was \$486.20.

In Order M-858, Inquiry Officer Hale noted that the appellant requested a fee waiver in his submissions in response to the Notice of Inquiry which was sent to the parties in that appeal. He determined, however, that as the request for a fee waiver was not made to the Townships and was not the subject of the appeal, he had no jurisdiction to address this issue.

Upon receipt of Order M-858, the appellant wrote to the Townships and requested that the fees (in the amount of \$486.20) be waived on the following grounds:

- he is a senior citizen on a fixed income, and payment will cause him a financial hardship; and
- dissemination of the records will benefit other concerned ratepayers.

The Townships responded to this request, and declined to grant a fee waiver. The appellant appealed the Townships’ decision and the current appeal file was opened to address this issue..

A Notice of Inquiry was sent to the appellant and the Townships. Both parties submitted representations in response to the Notice. The sole issue to be determined in this order is whether the Townships should have granted the appellant a fee waiver.

DISCUSSION:

FEE WAIVER

The provisions of the Act relating to fee waiver appear in section 45(4) of the Act, which states as follows:

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,

- (a) the extent to which the actual cost of processing, collecting and copying the record varies from the amount of the payment required by subsection (1);
- (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; and
- (d) any other matter prescribed in the regulations.

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 45.

As I noted above, in his letter to the Townships requesting a fee waiver, the appellant makes reference to his financial circumstances in support of his argument that payment of the fee estimate will cause him financial hardship (section 45(4)(b)).

The appellant also states that dissemination of the information in the records would benefit other concerned ratepayers. In this regard, the appellant indicates in his representations, that he intends to reveal the information in the records to the public as soon as it is available to him. He states that this matter (the perceived inconsistencies in the Financial Report) is very serious, and contends that he and the other ratepayers in the Townships are anxious to have this matter finally resolved. In my view, the appellant is alluding to section 45(4)(c) (whether dissemination of the record will benefit public health or safety).

I will deal with the public health and safety issue first. In Order P_474, former Assistant Commissioner Irwin Glasberg found that the following factors are relevant in determining whether dissemination of a record will benefit public health or safety under the section 57(4)(c) of the provincial Freedom of Information and Protection of Privacy Act, which is the equivalent of section 45(4)(c) of the Act:

1. Whether the subject matter of the record is a matter of public rather than private interest;
2. Whether the subject matter of the record relates directly to a public health or safety issue;
3. Whether the dissemination of the record would yield a public benefit by (a) disclosing a public health or safety concern or (b) contributing meaningfully to the development of understanding of an important public health or safety issue; and

4. The probability that the requester will disseminate the contents of the record.

I agree with former Assistant Commissioner Glasberg's interpretation and I adopt these factors for the purposes of this appeal.

While it may be that inconsistencies in the Financial Reports of the Recreation Committee, if established, would be the subject of some public interest, I am not satisfied that the disclosure of the records requested will benefit public health or safety within the meaning of section 45(4)(c).

I will now deal with the application of section 45(4)(b) of the Act. As noted above, the appellant indicated that, as a senior citizen on a fixed income, payment of the fee would cause him a financial hardship. The appellant did not provide the Townships with any details of his financial situation and, although requested, did not provide any information on this issue to the Commissioner's office. Based on the limited information provided by the appellant regarding his financial circumstances, I am not satisfied that the payment of the estimated fee would cause him a financial hardship within the meaning of section 45(4)(b).

Accordingly, I uphold the Townships' decision to deny the appellant's fee waiver request.

ORDER:

This appeal is dismissed.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ March 26, 1997