



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

# **ORDER M-1011**

**Appeal M-9700171**

**Municipality of Metropolitan Toronto**



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## **NATURE OF THE APPEAL:**

The Municipality of Metropolitan Toronto (the Municipality) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to all records in the requester's General Welfare Assistance (GWA) file. The requester asked that any applicable fees be waived. The Municipality located 353 pages and provided a fee estimate of \$70.60 at 20 cents per page for photocopying. The Municipality indicated that sections 12 and 38(a) applied to some pages of the record and denied the request for fee waiver. The Municipality suggested that the requester attend at its office to review the records and identify the pages sought in order to reduce the cost. The requester appealed the decision to deny a fee waiver. The requester did not appeal the exemptions under sections 12 and 38(a) claimed by the Municipality to withhold access to parts of the record.

During mediation, the requester, now the appellant, attended at the office of the Municipality to review and identify the pages of the record that he needed. This reduced the photocopying charges to \$32. The appellant indicated that this fee should be waived by the Municipality.

This office provided a Notice of Inquiry to the appellant and the Municipality. The sole issue in this appeal is the Municipality's decision not to waive the fees. Representations were received from both parties.

## **DISCUSSION:**

### **FEE WAIVER**

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

A head shall waive the payment of all or any part of an amount required to be paid under this Act 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 said record will benefit public health or safety;
- (d) any other matter prescribed in the regulations.

Section 8 of the Regulation then prescribes, in part:

The following are prescribed as matters for a head to consider in deciding whether to waive all or part of a payment required to be made under the Act:

1. Whether the person requesting access to the record is given access to it.
- ...

In the present case, the Municipality has raised the application of section 12 to part of the record.

Under section 45(5), an appellant has the right to ask the Commissioner to review an institution's decision not to waive the fee. The Commissioner may then either confirm or overturn this decision based on a consideration of the criteria set out in section 45(4) of the Act (Order P-474).

It has been established in 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 M-429, M-598 and M-914). 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.

In Order P-474, former Assistant Commissioner Irwin Glasberg found that the appropriate standard of review for discussions under section 57(4) of the provincial Freedom of Information and Protection of Privacy Act (which is the equivalent of section 45(4) of the Act), is one of correctness. In that same order, former Assistant Commissioner Glasberg also found that the phrase "in the head's opinion" means only that the head of an institution has a duty to determine whether it is fair and equitable in a particular case to waive a fee, and this wording does not affect the statutory authority of the Commissioner and her delegates to review the correctness of that decision.

The Municipality explains that it routinely receives a large number of requests for GWA files which vary in volume, depending on how the individual has been receiving benefits. The Municipality states that requesters are encouraged to view their files in order to identify the pages actually sought prior to requesting a copy of the complete file. The Municipality states that this practice helps to reduce costs for both the Municipality and the requesters.

The Municipality submits that in the present case, it exercised proper discretion in deciding to refuse to waive the fee based on the following:

1. the appellant did not provide specific information about his financial position, and
2. after the appellant reviewed his file, the number of pages that he wished to have copies of was reduced and as a result, the estimated fee was reduced to \$32.

The Municipality states that without detailed financial information from the appellant, it is unable to determine whether payment of the fee would cause him financial hardship. In his request to the Municipality, the appellant stated:

I receive current benefits under the General Welfare Assistance Act. The sums received are less than 50% of the amount as determined by the Government of Canada as the poverty line for a single person. The monies I do receive under GWA go toward shelter, food and basic necessities together with funds to assist me in attending medical appointments. There are no surplus funds to pay for the incidental costs of this application.

In his representations to this office, the appellant has provided details about his financial position. He states that the monthly amount received in GWA payment is his only source of income. He has provided a breakdown of the amounts used for shelter, basic allowances and medical transportation. He indicates that the information in the records is required to prepare for an ongoing civil suit involving the Municipality. The appellant acknowledges that the amount of the fee may appear to be small but points out that in his current financial situation, payment of even this small amount would cause him severe financial hardship.

Upon reviewing the evidence provided by the appellant, the Commissioner's office contacted the Municipality to afford it an opportunity to reconsider its decision on the basis of this information. The Municipality declined to do so. In my view, the appellant has provided sufficient evidence to demonstrate that payment of the fee would cause him financial hardship.

However, even if I accept that payment of the fee would constitute a financial hardship for the appellant, I must go on to consider whether it was fair and equitable for the Municipality **not** to have waived payment of the fee. Previous orders have set out a number of factors to be considered in determining whether a denial of a fee waiver is "fair and equitable". These factors are:

- (1) the manner in which the Municipality attempted to respond to the appellant's request;
- (2) whether the Municipality worked with the appellant to narrow and/or clarify the request;
- (3) whether the Municipality provided any documentation to the appellant free of charge;
- (4) whether the appellant worked constructively with the Municipality to narrow the scope of the request;
- (5) whether the request involves a large number of records;
- (6) whether or not the appellant has advanced a compromise solution that would reduce costs;

- (7) whether the waiver of the fee would shift an unreasonable burden of the cost from the appellant to the Municipality.

I have reviewed the representations of the parties and considered all the relevant factors. I note that the Municipality makes it a practice to encourage individuals requesting access to their GWA files, to review the contents prior to obtaining copies of the complete files. I agree that this is commendable, resulting in a "win-win" situation for both the individuals and the Municipality. In the present case, this resulted in a reduction of the fee estimate to \$32. However, in my view, this is not sufficient; the Municipality must demonstrate that it has turned its mind to the fact situation of each individual case and has considered the merits. I am not persuaded that the Municipality considered the facts and the evidence of this particular case.

Based on the evidence before me and in the particular circumstances of this case, I find that payment of the fee would constitute financial hardship for the appellant. I find that the Municipality's decision to deny waiver of the fee was not fair and equitable. Accordingly, I do not uphold the decision to deny waiver of fees.

**ORDER:**

1. I do not uphold the Municipality's decision.
2. I order the Municipality to waive the fee in this appeal and to disclose the records to the appellant by sending him a copy by **October 22, 1997**.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the Municipality to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: \_\_\_\_\_  
Mumtaz Jiwan  
Inquiry Officer

\_\_\_\_\_ October 1, 1997