



Information and Privacy
Commissioner/Ontario

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

ORDER P-1484

Appeal P_9700118

Ontario Hydro



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NATURE OF THE APPEAL:

The appellant, a non-profit organization, made a request under the Freedom of Information and Protection of Privacy Act (the Act) to Ontario Hydro (Hydro). The request was for access to information relating to nuclear performance and costs. Hydro initially provided the appellant with a fee estimate of \$921.60. It later revised the fee to \$591.60, after further investigation regarding the extent of the search required and for the preparation of the records. The appellant appealed the fee estimate.

Subsequently, the appellant asked Hydro for a waiver of the fee because payment would cause financial hardship and further, that the disclosure of the records would benefit public health and safety. Hydro denied the appellant's request for a fee waiver, and the appellant appealed this decision as well.

This office sent a Notice of Inquiry to Hydro and the appellant. Representations were received from both parties.

DISCUSSION:

FEE ESTIMATE

The charging of fees is authorized by section 57(1) of the Act, which 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 the Regulation also deals with fees. It states, in part, as follows:

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.

- ...
- 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.
- ...

Hydro's fee estimate is as follows:

Search and preparation time, 18 hours @ \$30 per hour =	\$540.00
Photocopying 258 pages @ \$0.20 per page =	\$51.60
TOTAL	\$591.60

Search and Preparation time

Hydro has estimated that the eight parts of the request will require a total of 18 hours of search and preparation time. It has provided me with an estimate for each part of the request, with a rationale for each estimate. Having reviewed the information, I am satisfied that the estimate is reasonable, and was calculated in accordance with the Act.

Photocopying

Hydro has indicated to the appellant that a fee of \$.20 per page will be assessed for photocopying. In my view, this fee is appropriate in the circumstances.

FEE WAIVER

Fee waiver is provided for by section 57(4) of the Act, which states:

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.

Section 8 of Regulation 460 provides as follows:

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.
2. If the amount of a payment would be \$5 or less, whether the amount of the payment is too small to justify requiring payment.

Many previous orders have held that the onus is on the appellant to demonstrate that a fee waiver would be justified.

Financial Hardship

The appellant submits that payment of a fee of \$591.60 will result in a financial hardship to the organization. The financial statements relied on by the appellant are for the period ending December 31, 1996, and are, therefore, inconclusive of its current financial situation. I find, however, that because the organization has a stated cash balance of \$3,164.45, there is money available to pay the fees. Further, the financial statements reveal that there were minimal outstanding financial commitments as of December 31, 1996.

Therefore, in my view, the appellant's entitlement to a fee waiver under section 57(4)(b) has not been substantiated, and the appellant is not entitled to a fee waiver on the basis of financial hardship.

Public Interest

The appellant argues that disclosure of this information will benefit public health and safety. The appellant claims that the effects of performance and costs at Ontario Hydro nuclear stations on public health and safety are obvious:

Reduction of maintenance or capital expenditures on nuclear stations may result in poorer performance and increased risk of accidents. This has the potential to result in increased "routine" as well as accidental radioactive emissions. Poor performance also results in higher costs, which are transferred to Ontario Hydro's customers. Trade-offs between nuclear safety and performance and cost have been front and center as Ontario Hydro's traditional monopoly has been threatened with the introduction of some form of competition.

Hydro submits that dissemination of the records requested will not benefit public health or safety for the following reasons:

- (1) The subject matter of the records requested does not relate to, let alone directly relate to, a public health or safety issue. Hydro respectfully submits that it would be erroneous to assume that the contents of the “nuclear performance and costs” records requested, relate to a public health or safety issue by virtue of being connected to nuclear energy;
- (2) Even if the records do contain some information relating to health or safety matters, and it is expressly denied that they do, Hydro respectfully submits that the fee should not be waived simply for this reason.
- (3) The dissemination of the records will neither yield a public benefit by disclosing a public health or safety concern, nor will they contribute meaningfully to the development or understanding of an important public health or safety issue.
 - (a) On August 12, 1997, Hydro’s Board of Directors reviewed and approved a comprehensive report to Management including recommendations for the improved operation of the nuclear facilities. These recommendations and associated costs will supersede information requested in parts 2, 3, 5, 6, 7, 8 and 9, of the request. This report has been released widely to the public and is available on the Ontario Hydro Corporate Web Site at <http://www.hydro.on.ca>. As such, the records in question are not germane to present and future operations and therefore any public benefit is diminished accordingly.
 - (b) Part 1 of the request relates to expenditures allocated to the “Nuclear” business for the years 1986 - 1996. The only way this information can be provided is by way of an aggregate number for these expenditures. Ontario Hydro submits that these aggregate figures in of themselves will not contribute to public health or safety.
 - (c) Part 4 of the request requires that Ontario Hydro calculate data based on nuclear operations staff, per megawatt of power. As an example of the format/detail required, the Appellant provided a 1994 document that was used to respond to an enquiry at a rate hearing in 1994. Ontario Hydro submits that the calculated data, while appropriate information for a rate hearing, will not yield any benefit to public health or safety.

Having reviewed a sample of the records, I find nothing which suggests that these records will have an impact on public health or safety. In my view, this ground of waiver as advanced by the appellant is not supported by the contents of the records, and the appellant is not entitled to a fee waiver on the basis that the dissemination of **these** records will benefit public health or safety.

Even if I were to find that dissemination of the records would cause financial hardship to the appellant or benefit public health or safety, the Act requires consideration of whether it would be “fair and equitable” to waive the fee.

Hydro submits that it would not be fair and equitable to waive the fee for the following reasons:

- (a) Hydro responded to the Appellant’s requests in a diligent and helpful manner.
- (b) Hydro attempted to work with the Appellant to narrow and clarify the request.
- (c) The Appellant failed to work constructively with Ontario Hydro to narrow the scope of the request.
- (d) Even though the Appellant was informed that the information would be outdated, it still required the Information and Privacy Commissioner to pursue the appeal. Approximately 65% of the fee estimate relates to outdated records that are no longer relevant to present and future operations.
- (e) Although the request does not involve a large number of records, the logistics involved in search and preparation and compilation are burdensome to Hydro, particularly at this time when the priorities are to turn around the nuclear performance and to prepare for competition.

I agree with the submissions advanced by Hydro, and would not consider it fair and equitable to waive the fees in these circumstances.

ORDER:

1. I uphold a fee estimate in the amount of \$591.60.
2. I do not uphold the appellant’s request for a fee waiver.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ November 10, 1997