



Information and Privacy
Commissioner/Ontario

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

ORDER M-1069

Appeal M-9700266

Wellington, Dufferin, Guelph Health Unit



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NATURE OF THE APPEAL:

The Wellington, Dufferin, Guelph Health Unit (the Health Unit) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for the names and addresses of all licenced sewage haulers in the Health Unit area, their approved disposal sites (past and present), along with the date and year when these sites were applied for and approved.

The Health Unit denied access to the information for the current year, 1996, and, in Order M-963, it was ordered to provide the information for 1996 to the appellant. Fees were not an issue in that appeal. The parties agreed that the Health Unit would issue a new decision on the remainder of the request. It is this information for the years 1975-1995 which is the subject of this fee appeal.

The Health Unit issued a fee estimate of \$4,500 to search for the information.

The requester (now the appellant) appealed the fee amount. Upon receipt of the appeal, this office confirmed that the appellant was appealing the fee estimate only. Therefore, fee waiver is not at issue in this appeal.

PRELIMINARY ISSUE:

ENVIRONMENTAL PROTECTION ACT

Before considering the Health Unit's fee estimate, I will address the appellant's claim that because the Health Unit is acting as the agent for the Ministry of the Environment (the Ministry), the wording of section 19 of the Environmental Protection Act (the EPA) entitles him to receive the information without a fee.

I have reviewed section 19 of the EPA and, in my view, the procedure outlined in this section with respect to obtaining approval information is as follows.

The Ministry is obliged under section 19(2) of the EPA to keep an alphabetical index of the names of all persons to whom orders or approvals have been directed under the EPA.

Section 19(4) of the EPA states that upon receiving a request the Ministry shall search the index for a particular name, inform the requester whether the name appears on the list and permit inspection of any order or approval relating to that person.

Section 19(3) of the EPA states that the Ministry shall remove from the index the names of persons receiving approvals when an order or approval has expired or been revoked or set aside. In my view, the Health Unit is not obliged to provide information identified in relation to a time period such as 20 years without a fee. Section 19(4) of the EPA states that **upon being given a name**, the Ministry shall search for the name and permit inspection of any order or approval relating to that person. In the circumstances of this appeal, the appellant has asked for all approvals of a certain type over a 20 year period.

Although Inquiry Officer Laurel Cropley referred to the EPA in Order M-963 as a factor in her decision to order the 1996 information disclosed to the appellant, it was in the context of determining whether the information given by those seeking an approval had been supplied in confidence for the purposes of section 10 of the Act. She determined that because of the provisions of section 19 of the EPA, there could be no expectation of confidentiality. The question of a fee for the 1996 information was not at issue in Order M-963.

DISCUSSION:

FEE ESTIMATE

The charging of a fee is authorized by section 45(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 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 7(1) of the Regulations states that if a head gives a person an estimate of an amount payable under the Act and the estimate is \$100 or more, the head may require the person to pay a deposit equal to 50 per cent of the estimate before the head takes any further steps to respond to the request. In its decision letter, the Health Unit has requested a deposit of 50% of the estimate.

In reviewing the Health Unit's fee estimate, my responsibility under section 45(5) of the Act is to ensure that the amount estimated by the Health Unit is reasonable in the circumstances. In this regard, the burden of establishing the reasonableness of the estimate rests with the Health Unit. In my view, it discharges this burden by providing me with detailed information as to how the fee estimate has been calculated, and by producing sufficient evidence to support its claim.

The Health Unit states it is prepared to waive the search fees for 1989, the year it used as representative in order to determine the estimate. Pursuant to Order M-963, the appellant already has

the information for 1996. Therefore, the estimate of search time applies to the years 1975-1988 and 1990-1995, a total of 20 years.

The Health Unit's fee estimate is as follows:

Search time:	7.5 hours x \$30/hr	=	\$ 225 per year
	20 years x \$225	=	\$4,500

Section 45(1)(b) permits the charging of fees for the costs of preparing the record for disclosure. The Health Unit has not indicated that this task is included in the fee. Section 6 of the Regulation provides for a charge of \$0.20 per page for photocopies. The Health Unit has not included any charge for photocopies in its fee estimate.

The requested information is contained in records referred to as Applications for Certificate of Approval, Class 7 - Hauled Sewage System (Order M-963).

The Health Unit states that in preparing its fee estimate it conducted a search for the requested information on the approvals for 1989, a year which it considered to be representative. The search was conducted by a clerk experienced with performing searches for Certificates of Approval.

The files are stored by year and municipality by the date of completion, not by the date the approval was granted. For the kind of approvals the appellant is seeking, the Health Unit grants approvals for sites only. It does not license the haulers.

The Health Unit states that the clerk required 10.5 hours to search for the responsive information. However, in the course of conducting the search the clerk determined that 1989 was not a representative year, therefore, the Health Unit discounted the search time to 7.5 hours. The Health Unit's estimate indicated that it took approximately two minutes to review each documents contained in the year's files in order to locate the certificates.

The Health Unit states that although the number of disposal sights approved in a year is small relative to the total number of approvals granted by the Unit, all records for the year must be searched. The Health Unit also states that if the appellant were able to ask for specific approval sites this would substantially reduce the fee.

The Health Unit informs me that in 1996 it changed its procedure for preparing the index. For the first time, entries in the 1996 index contained information about the type of approval that was granted. This made locating the type of information the appellant was seeking for that year much easier. Although indices exist for previous years, they do not contain this information about the type of approval obtained.

It is clear that the Health Unit must engage in an extensive search to locate the Class 7 approvals for a particular year. However, in the circumstances of this appeal, I find that almost two minutes to examine

a record by an experienced employee in order to determine if each record is a standard piece of information such as an application for Certificate is not reasonable. Whether or not a particular document is an application of this kind should be readily apparent to the experienced eye. I am also concerned that the Health Unit has based its estimate upon the review of a file which by its own admission was not representative even though the Health Unit "discounted" its search time.

I find that a time of one minute would be reasonable. Accordingly, I find that half the time estimated by the Health Unit to search for the responsive records is reasonable.

Therefore, the Health Unit should adjust its fee estimate to charge 3.75 hours of search time per year. This amounts to $\$112.50/\text{yr} \times 20 \text{ years} = \$2,250$.

Accordingly, the Health Unit may request a deposit of \$1125 before beginning its search for all the responsive records or \$56.25 for each year requested.

The appellant claims that if the Health Unit has not kept the records in proper order he should not have to pay for them conducting an extensive search.

Former Commissioner Sidney B. Linden addressed this issue in Order 31. While Order 31 dealt with section 57(1) of the provincial Freedom of Information and Protection of Privacy Act, section 57 of the provincial Act is very similar in wording to section 45(1) of the Municipal Freedom of Information and Protection of Privacy Act. Order 31 states the following:

In this case, the major component of the estimated fee is the costs related to locating the record for disclosure (subsection 57(1)(a)). In calculating these search costs, the institution took into account the time involved in locating files which are properly filed and/or accounted for and the number that are currently in use whether properly accounted for or not. While the institution's filing system may not be the most efficient, the Act does not mandate a requirement on the part of the institution to keep records in such a way as to be able to accommodate any of the myriad of ways in which a request for information might be framed.

It would appear that in this appeal, a situation similar to that described in Order 31 exists. The Health Unit's index for the years prior to 1996 does not lend itself to an easy or efficient search for the information requested. However, this has been remedied with the changes to the 1996 index.

I note, however, that the Health Unit states that the fee would be lowered substantially if the appellant would narrow the scope of his request with respect to the number of years required or geography. In his representations, the appellant indicates that there is information relating to specific persons or companies that he is seeking. If this is correct, I encourage the appellant to work with the Health Unit in this regard.

ORDER:

[IPC Order M-1069/January 29,1998]

I order the Ministry to adjust its fee estimate as follows:

Search time 3.75 hours/year @ \$30 per hour x 20 years	..	\$2,250
Photocopying		\$ nil
Preparing record for disclosure		\$ nil
TOTAL ESTIMATED FEE	..	\$2.250
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Original signed by: _____
Marianne Miller
Inquiry Officer

_____ January 29, 1998