



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1592

Appeal P-9800085

Ministry of the Solicitor General and Correctional Services



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NATURE OF THE APPEAL:

The Ministry of the Solicitor General and Correctional Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to eight specified policy and procedure manuals used by the Centre of Forensic Sciences. The Ministry granted partial access to the records and provided a fee estimate of \$132.20, consisting of photocopying fees of \$117.20 and search fees of \$15.

The requester made a request for waiver of the fees. The Ministry declined the request. The requester appealed the decision to deny access and the decision to deny the request for a fee waiver.

During mediation, the requester, now the appellant, advised that he had now paid the deposit requested by the Ministry. The appellant also narrowed the scope of the appeal to the amount of the fee charged for search time.

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

DISCUSSION:

FEE ESTIMATE

The Ministry has charged an estimated fee of \$117.20 for photocopying and \$15 for search time. The appellant is not disputing the estimated cost of photocopying the records. Therefore, the issues before me are the amount of the fee for search time and the Ministry's refusal to waive this fee.

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:

...

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, \$15.00 for each 15 minutes spent by any person.

The Ministry submits that the search fee for locating the eight manuals is reasonable. It points out that it has not charged the appellant for the time spent in severing and preparing the records for disclosure; nor has it charged for the cost of shipping the records to the appellant. The Ministry submits that the actual time spent locating and preparing the manuals would be in excess of two hours.

The appellant submits that the manuals are already bound and no fee should be charged for “assembling the requested records”. The appellant states that this is his second request for records relating to the Forensic Science Centre and that he was not previously charged for search time. It is the appellant’s position that the manuals should be available in a public reading room and that this would avoid the issue of a fee for search and preparation.

I have carefully considered the representations of the parties together with all of the circumstances of this appeal. In my view, the fact that the appellant was previously not charged for search time does not negate the Ministry’s obligation to charge him in this instance. Under the Act, the head of an institution is obligated to require a requester to pay the fees set out in the regulations. I find that the fee of \$15 for a search time of 30 minutes to locate the eight records is reasonable 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.

Previous orders of the Commissioner have determined that the onus is on the appellant to demonstrate that a fee waiver would be justified.

PUBLIC INTEREST

In his letter of appeal, the appellant indicated that he was appealing the Ministry's refusal to waive fees under section 57(4)(c) (public health and safety). In his representations, the appellant states his belief that the records are supposed to be available in a public reading room. He goes on to say that the Centre of Forensic Science is in the Ministry's Public Safety Division and that the records "are used in making decisions designed to remove threats to public safety".

The Ministry acknowledges that the activities of the Centre of Forensic Science have been a matter of public interest as a result of the Kaufman Inquiry into the wrongful conviction of an innocent person. However, it is the Ministry's position that dissemination of the highly technical information in the manuals would not contribute to public understanding of a public health and safety issue.

I have carefully reviewed the representations of the parties. I agree with the Ministry and accept that dissemination of the highly technical information in the records would not lead to a better understanding of a public health and safety issue. In my view, the appellant has not addressed the issue and has not established how the dissemination of the particular information in the manuals will benefit public health and safety such that the Ministry would be obliged to waive the fee otherwise payable under section 57(1) of the Act.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____ July 7, 1998
Mumtaz Jiwan
Adjudicator