



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

ORDER PO-1704

Appeal PA-990065-1

Ministry of Health



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The appellant made a request to the Ministry of Health (the Ministry) under the Freedom of Information and Protection of Privacy Act (the Act) for information pertaining to the Ministry's payments in the past five years to lawyers/law firms for services provided to the Minister of Health, the Administrator of the Penetanguishene Mental Health Centre and their employees regarding proceedings before the Ontario Review Board or any disciplinary bodies.

The Ministry issued an interim decision indicating that access would be granted to some records in whole or in part and access would be denied to other records pursuant to sections 17(1), 19, 21(1) and 65(2)(a) of the Act. The Ministry also assessed a fee of \$405 for the processing of the request.

The appellant then wrote to the Ministry requesting that the fees be waived pursuant to section 57(4)(b) (financial hardship) of the Act.

The Ministry replied to the appellant indicating that, in order to consider a request to waive fees, the appellant must provide the Ministry with information regarding his financial position. The Ministry noted that such information should include proof of assets, income, expenses, etc.

The appellant replied stating that he would not disclose to the Ministry any detailed financial information. The appellant did, however, advise the Ministry of his assets, the balance of his bank account, the amount and source of his income and gave details regarding his expenses.

The Ministry then denied the appellant's request for a fee waiver on the basis that the appellant did not provide the Ministry with sufficient documentation concerning his financial position.

The appellant appealed the Ministry's denial of a fee waiver.

I sent a Notice of Inquiry to the Ministry and the appellant. Representations were received from both parties. The sole issue to be determined in this appeal is whether the Ministry's decision not to grant a fee waiver should be upheld.

DISCUSSION:

FEE WAIVER

The charging of fees is authorized in section 57(1) of the Act, and more specific provisions regarding fees are found in sections 6 and 6.1 of R.R.O. 1990, Regulation 460. Provisions regarding fee waiver are found in section 57(4) of the Act and section 8 of R.R.O. 1990, Regulation 460.

An appellant, by virtue of section 57(5) of the Act, has the right to ask the Commissioner to review an institution's decision not to waive a fee. The Commissioner may then either confirm or overturn this decision based on a consideration of the criteria set out in section 57(4) of the Act.

Previous orders of this office have found that the standard of review which should apply to the review by the Commissioner or his delegate to decisions issued under section 57(4) of the Act is one of correctness (Order P-474). I agree.

In the Notice of Inquiry, I asked the appellant to respond to the following:

You are asked to comment on the availability of a fee waiver with reference to the provisions of section 57(4) of the Act and section 8 of R.R.O. 1990, Regulation 460. In Order 31 and subsequent orders it has been held that it is up to the requester to provide adequate evidence to support a claim for a fee waiver. In view of that, it would be advisable for you to submit any documents or other evidence which would support your entitlement to a fee waiver. You are also invited to comment on any of the other issues in the appeal, and to submit any further documents or other evidence which may be relevant.

In particular, you are asked to comment on the sufficiency of the financial information which you provided to the Ministry in response to its requests for details of your financial situation.

The Ministry was also asked to comment on this last point.

The appellant explains why he needs the requested records, although he would prefer that this information not be expressed. Although not claimed by the appellant in his request to the Ministry or during mediation, the appellant now argues that his reasons for requesting the information from the Ministry is of "public importance because it will likely result in the exposure of an inappropriate use of public funds ...". In my view, the appellant is now claiming that dissemination of the record will benefit public health or safety (section 57(4)(c)). I will address this below.

The appellant notes that, in its decision letter, the Ministry referred to a number of orders of this office which determined that a requester bears the burden of providing the institution with "adequate" information concerning his or her financial position. He states that he has been held in detention in a maximum secure institution for the past 18 years, and submits that whether or not the information is "adequate" must be considered in this context. He states:

It is hard to imagine that someone detained in custody for that length of time would have any assets or a significant income. Everyone here suffers financial hardship by reason of their detention alone.

He submits that it is unreasonable to require that he produce documents such as bank statements, income tax returns or copies of his Canada Pension cheques in order to prove that he suffers financial hardship.

The Ministry sets out the appellant's response to its request for information in support of a fee waiver. In his response, the appellant states that he does "not feel comfortable in providing detailed financial information for the purpose of a fee waiver ..." and indicates that he will not provide copies of any records in that

regard. He then goes on to indicate what personal property he owns, the amount of money in his bank account and the amount of money he receives from his disability pension under the Canada Pension Plan. He states that this money is deposited directly into his account at the institution and then he describes how he usually spends the money, most of which is spent on personal items and food.

The Ministry states that the appellant's reasons for requesting the fee waiver are subjective and offer no substantive evidence of financial hardship. The Ministry notes that the appellant refused to provide it with copies of any records in support of his claim that payment of the fees required by the Act would place any undue financial burden on him. The Ministry refers to a number of orders issued by this office which have commented on the sufficiency of evidence to support a claim of financial hardship and submits that the information provided by the appellant was insufficient to enable it to find that he would suffer financial hardship.

The Ministry also takes the position that the appellant's spending habits reflect personal choices rather than necessities and notes that all residents of the institution are provided with the accommodation, clothing and food essential to their well-being at no cost and he is, therefore, not in actual need in this regard. The Ministry concludes:

The Ministry has been provided with no objective reasons to consider whether his "financial hardship" is due to other than the appellant's own mismanagement of his available funds.

Findings

Financial hardship

A number of orders of this office have dealt with fee waiver requests from inmates in correctional or psychiatric institutions.

In Order P-566, Adjudicator Holly Big Canoe stated:

The appellant stated that he is the recipient of general welfare assistance and that he is committed to pay monthly child support to his former wife. However, he has not provided any further information concerning his assets and expenses in support of his position. Without detailed information of this sort, I am unable to determine if payment of the fees requested by the Ministry would, in fact, cause financial hardship to the appellant.

In my view, Order P-95 is of particular relevance in the current appeal. In that order former Commissioner Sidney B. Linden commented on the sufficiency of evidence provided by an inmate in a place of detention, and noted:

In the Appeals Officer's Report, you were asked to provide me with evidence as to your net worth, however you did not respond to that request. Beyond providing the institution

and myself with a statement of your present and projected earnings during your confinement, you have provided no other details to support your request for a fee waiver under that subsection and, as such, have not discharged the required burden of proof.

In my view, the mere fact that an individual is an inmate in an institution is not, in and of itself, sufficient evidence that the individual suffers a financial hardship, although it is a factor to take into consideration in the overall assessment of the individual's financial position.

With respect to his reasons for requesting the information, I note that in Order P-111, former Commissioner Linden found that the appellant's perceived need for the records is not a consideration for a fee waiver listed in section 57(4) (formerly section 57(3)). He determined that a need for the records would be present whenever a request was made. I agree. Although I appreciate the appellant's position, in my view, his reasons for requesting the information are not relevant to a determination of whether paying the fees would cause him financial hardship (section 57(4)(b)).

I am not prepared to impose a value on the personal choices an inmate makes in his spending of what is, by any standards, a modest amount of monthly pension income. In my view, other than evidence of tangible expenses such as bills and receipts, it is very difficult to provide objective evidence of the manner in which money is spent over a month. I am satisfied that the appellant has detailed his monthly expenses in such a way as to account for the manner in which this particular money is spent.

However, the appellant has the ability to provide evidence of his income, his bank account and his assets, but he has chosen not to do so. Rather, he believes that the Ministry should accept his word for it. I note that the appellant has not provided this information to this office. In my view, the appellant has failed to provide the Ministry with adequate information of his total financial position, and has, therefore, failed to discharge the burden of proof in this regard. Moreover, I find that I have not been provided with sufficient evidence of financial hardship that warrants shifting the financial burden from the appellant to the Ministry and ultimately to the public.

Public interest

As I noted above, the appellant only raised this issue in his representations, and the Ministry has not been given an opportunity to address it. However, because of my findings on this issue, I decided it was not necessary to put this issue before the Ministry.

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 and safety under section 57(4)(c) of the Act:

1. Whether the subject matter of the records is a matter of public rather than private interest;

2. whether the subject matter of the records relates directly to a public health or safety issue;
3. whether the dissemination of the records 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 records.

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

Without detailing the appellant's arguments in this regard, his position is, essentially that he believes that the Ministry is providing legal assistance for its employees who have had complaints brought against them by inmates. He argues that by doing so, the employees are not deterred from committing further "wrongdoings" against inmates. He submits that disclosure of the information he has requested will expose what he considers the inappropriate use of public funds. He believes that once funding for legal assistance is removed, behaviour will change resulting in fewer complaints and less cost to the public.

Although I accept that complaints against employees who are alleged to have harassed or abused inmates are a serious concern, I am not persuaded that disclosure of the information which the appellant has requested will either disclose a public health concern nor contribute to the development of understanding of this issue. Moreover, the appellant has not provided any representations on how he expects to disseminate the information he has requested. Based on the test outlined above, I am not persuaded that dissemination of the requested records will benefit public health 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: _____
Laurel Cropley
Adjudicator

August 19, 1999