



Information and Privacy  
Commissioner/Ontario

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

# ORDER PO-1703

Appeal PA-990022-1

Ministry of Health



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## **NATURE OF THE APPEAL:**

The appellant submitted a ten part request to the Ministry of Health (the Ministry) pursuant to the Freedom of Information and Protection of Privacy Act (the Act) for access to certain records surrounding the 1997 Request for Proposal for the Canadian Blood Information System, as well as other related documents.

The Ministry responded by issuing an interim access decision and a fee estimate totalling \$149,485. In its decision, the Ministry explained that the responsive records may exist in three different areas of the Ministry, namely the Negotiations Secretariat, Public Health and Legal Services Branches. The Ministry issued a separate fee estimate for each of these areas. Each fee estimate was broken down into search time, preparation and photocopying costs.

In its interim decision, the Ministry stated that any responsive records located at the Negotiations Secretariat and the Public Health Branch would likely be subject to full or partial exemption from access under sections 15, 17 and/or 18 of the Act. The Ministry also indicated that any responsive records located at the Legal Services Branch would be subject to severances pursuant to sections 13, 15, 17, 18, 19 and 21 of the Act.

In its interim decision, the Ministry also indicated that both the Public Health and Legal Services Branches require an extension of time, 40 days and 68 days respectively, pursuant to section 27 of the Act, in which to complete the search.

The appellant appealed only the Ministry's fee estimates.

During mediation of this appeal, the appellant agreed to narrow the scope of his request to records responsive to points 3, 4, 6 and 9 of his request. The particulars of these four parts of the request are as follows:

3. Copies of any, and all, evaluations of Blood Trac systems Inc. (BTSI), the Computer Information System for Central Operations (CISCO), the Blood Information System (BLIS), and the Spartan Solution, by officials of the Bureau of Biologics & Radiopharmaceuticals (BBR), Canadian Blood Agency (CBA) or Canadian Red Cross society (CRCS);
4. Copies of all correspondence exchanged between the BBR, CRCS and CBA relative to the functionality of the CISCO project, BLIS and the Spartan Solution, including reports written in 1996 by BBR officials relative to the feasibility of the CISCO project and ultimately forwarded to the CRCS and the CBA;
6. All correspondence relating to the "GAP-Analysis" undertaken by the BBR and CRCS to determine the requirements for a fully functional information system, to be developed by MAK Systems for the Canadian Blood system (CBS). This correspondence is also to include the cost estimate to fully implement the MAX

Automated Information System in Canada, as applied to all aspects of the DBS, including the date it is anticipated that this system will be fully implemented in Canada; and

9. All correspondence relating to the acceptance of MAK System as the successful Bidder to supply Canada with a fully automated blood information system. This correspondence is to include the "guiding principles/rationale" used to determine the successful bidder.

The appellant also limited the scope of his appeal to the fee estimates relating to the Negotiations Secretariat and the Public Health Branch. Accordingly, the Ministry's interim decision relating to the Legal Services Branch is no longer at issue in this appeal.

Also during mediation, the appellant confirmed that he is not appealing the Ministry's time extension decision relating to the Public Health Branch.

Finally, the appellant provided the names of two individuals who would have been involved with the Request for Proposal. He believes these individuals should have at least some of the records responsive to his request. This information was provided to the Ministry during mediation.

The Ministry, however, advised the Mediator that, notwithstanding the above, the fee estimates relating to the Negotiations Secretariat, as well as the Public Health Branch, remain the same.

As a result of the above, the Ministry's fee estimates for these two areas remain at issue. The Ministry broke down the fees relating to these two areas as follows:

### **Negotiations Secretariat**

#### **Search**

2 hours @ \$7.50/15 minutes	..	..	\$ 60
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#### **Preparation**

severing 240 pages of records at 2 minutes per page @ \$7.50/15 minutes	..	..	\$240
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#### **Photocopying**

estimated 250 pages at \$0.20 per page	..	..	<u>\$ 50</u>
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**Total** .. **\$350**  
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**Public Health Branch**

**Search**

20 hours @ \$7.50/15 minutes .. .. \$600

**Preparation**

severing approximately 15 pages of records  
at 2 minutes per page @ \$7.15/15 minutes .. .. \$ 15

**Photocopying**

estimated 100 pages at \$0.20 per page .. .. \$ 20

**Total** .. **\$635**  
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**TOTAL ESTIMATED COST** .. **\$985**

I sent a Notice of Inquiry to the appellant and the Ministry. Representations were received from the Ministry only.

**DISCUSSION:**

**FEE ESTIMATE**

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

Section 57 of the Act states, in part:

- (1) 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.
- (6) The fees provided in this section shall be paid and distributed in the manner and at the times prescribed in the regulations.

Section 6 of R.R.O. 1990, Regulation 460 states:

6. 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.
  - 2. For floppy disks, \$10 for each disk.
  - 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.
  - 5. For developing a computer program or other method of producing a record from machine readable record, \$15 for each 15 minutes spent by any person.
  - 6. The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the record if those costs are specified in an invoice that the institution has received.

## **Negotiations Secretariat**

### **Search costs**

The Ministry indicates that all of the documents in this branch which would be responsive to the appellant's narrowed request are likely to be in the files of a particular individual who acquired them as a result of her being appointed by the Minister of Health as a director on the Board of the CBA during a period of time in 1997. The Ministry points out that although the CBA is a separate corporation, this individual was also Director of the Negotiations Secretariat, and the records would, therefore, likely be located in this office.

The Ministry states that it must search through approximately 50 documents with an average per document page count of five. The Ministry notes that although all of the documents were provided by the CBA, some of them originated from other organizations. The Ministry indicates further that some of these records will already be in the public domain, while others will likely affect the interests of various third parties.

The Ministry states that a page-by-page reading of each document is required to determine whether it contains responsive information and that it has based its estimate on an average of 30 seconds per page to accomplish this task.

### **Preparation**

The Ministry indicates that given the nature of the content of any responsive records, third party notification will be likely for a large number of them. As a result of third party interests, the Ministry anticipates that parts of most pages will be subject to severances under sections 15, 17 and 18 of the Act. The Ministry indicates that it estimates that approximately 250 pages will be located and of those, 240 will entail severing.

### **Photocopying**

The Ministry indicates that it expects to provide the appellant with 250 pages of records at \$0.20 per page.

### **Findings**

I recognize that the request is quite detailed and is seeking very specific information. However, in my view, the nature of the information requested would be readily apparent from a quick scanning of a document, even on a page by page basis. Assuming each document is approximately five pages, I do not accept that it would require over two minutes per document to determine whether it contained responsive information, particularly when this review is conducted by an individual who is familiar with the subject matter.

Further, the Ministry indicates that it has based its preparation and photocopying estimates on 250 pages of responsive records. I note that this is the number of pages the Ministry states it must search through to locate responsive information. This would indicate to me that the Ministry expects to find responsive information in all of these pages and it would, therefore, only require a quick scan to confirm that they contain responsive information. The fact that each page might also contain other information which may be subject to severance is not relevant to the calculation of the costs for searching for responsive records as the time for making a decision on access cannot be included in this cost.

Therefore, I find that a more reasonable estimate would be half an hour to scan approximately 250 pages of records to confirm that they contain information which is responsive to the request.

The Ministry indicates that the vast majority of the records will contain information which is exempt under sections 15, 17 and 18, and that it will require two minutes per page to sever this information from the records. Previous orders of this office have found that two minutes per page to sever records is reasonable (see: Orders M-811, M-858, MO-1169 and P-1536, for example). In my view, this amount of time is reasonable in view of the number of exemption claims and the amount of information which the Ministry expects to sever.

With respect to the costs of photocopying the records, section 6 of Regulation 460 permits photocopies to be made at a cost of \$0.20 per page. Therefore, I find the Ministry's calculation of this cost is made in accordance with the Act.

## **Public Health Branch**

### **Search costs**

The Ministry notes that an initial inquiry into where responsive records might be located turned up 27 boxes of records which were in the possession of the Ministry's Record Management Services. These records were received from the Public Health Branch for indexing and archiving. The Ministry indicates that the records in these boxes were originally gathered for possible use during the Krever Commission. The Ministry claims that each box contains anywhere between 3,000 to 8,000 pages of records depending on how they had been arranged in the boxes. The Ministry indicates further that the contents of each box appear to be unique and it is therefore, not possible to search through a representative sample in order to determine whether they might contain responsive records. Moreover, the Ministry states that a general index of the boxes indicates that the contents of some boxes are defined by time frames, while others are defined by subject matter, often in very general terms with little reference to overall chronology of origin.

Consequently, the Ministry foresaw that a search for responsive records would require a page-by-page examination of at least some of the contents of many of the boxes. In this regard, the Ministry notes that it is likely that some of the boxes could be reviewed very quickly, either because of indexed time frame or homogeneity of content, however, it expects that some boxes will have to be viewed more carefully. The Ministry submits that 20 hours to search through all of the boxes in this manner is a conservative estimate and is, therefore, reasonable in the circumstances.

The Ministry indicates that it does not expect to locate many responsive records as a result of this search, but notes that it must search through all of the boxes "in order to satisfy the Act's requirement of a thorough and complete search".

## **Preparation costs**

Further, the Ministry expects that responsive records will contain third party information and will, therefore, require severing on the same basis as those in the Negotiations Secretariat.

## **Photocopying**

As above, the Ministry has charged the appellant the amount allowable under the Act for photocopying.

Finally, by way of general comment, the Ministry notes that although mediation resulted in a narrowed request, it had little impact on the time that will be required to conduct a conclusive search for responsive records. This is because of the way in which the records were collected and filed for their most recent use, as possible exhibits during the proceedings of the Krever Commission.

## **Findings**

In Order 31, former Commissioner Sidney B. Linden commented on the potential impact an institution's filing system may have on the calculation of fees for locating responsive records. He found:

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, I accept the institution's submission that 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.

I agree with this conclusion. In my view, the manner in which the records were filed is consistent with their last intended use. The location of potentially responsive records was quickly identified, however, the records were not filed or identified in such a way as to facilitate a search for records responsive to the request. I find that the Ministry is entitled to charge the appellant for the costs of searching through the records as they are currently filed.

In my view, based on a total number of 27 boxes, the Ministry's estimate of less than one hour per box is reasonable. This takes into account that it may require less time to review some boxes while requiring considerably longer to review others.



Further, consistent with my findings above, severances based on two minutes per page are also reasonable, as is the charge for photocopying those records to which access is granted.

**Summary**

In summary, I find that the Ministry is entitled to charge the appellant the following for search, preparation and photocopying of records in the Negotiations Secretariat and the Public Health Branch:

**Negotiations Secretariat**

**Search**

1/2 hour @ \$7.50/15 minutes	..	..	\$ 15
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**Preparation**

severing 240 pages of records at 2 minutes per page @ \$7.50/15 minutes	..	..	\$240
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**Photocopying**

estimated 250 pages at \$0.20 per page	..	..	<u>\$ 50</u>
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<b>Total</b>	..		<b>\$305</b> =====
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**Public Health Branch**

**Search**

20 hours @ \$7.50/15 minutes	..	..	\$600
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**Preparation**

severing approximately 15 pages of records at 2 minutes per page @ \$7.50/15 minutes	..	..	\$ 15
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**Photocopying**

estimated 100 pages at \$0.20 per page	..	..	<u>\$ 20</u>
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Total .. \$635  
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**TOTAL ESTIMATED COST                    \$940**

As this is an estimated cost only, if the Ministry ultimately determines that it requires less time to conduct its search for responsive records and/or it determines that it will disclose a fewer or greater number of pages of records to the appellant, this cost should be adjusted accordingly.

**ORDER:**

1. I do not uphold the Ministry's fee estimate of \$985.
2. I have revised the estimate the Ministry may charge to the appellant to \$940 for search, preparation and photocopying.

Original signed by: \_\_\_\_\_

Laurel Cropley

Adjudicator

\_\_\_\_\_ August 19, 1999