



Information and Privacy  
Commissioner/Ontario

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

# **ORDER PO-1775**

Appeals PA-990051-1 and PA-990150-1

Workplace Safety and Insurance Appeals Tribunal



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## **NATURE OF THE APPEAL:**

The appellant submitted two requests to the Workplace Safety and Insurance Appeals Tribunal (the Tribunal) under the Freedom of Information and Protection of Privacy Act (the Act) for access to the following information, on audiotape, in French:

### 1. Appeal Number PA-990051-1

1. All information and evidence considered in the appellant's files with the Tribunal to arrive at Decision Number 325/95R dated November 13, 1998; and
2. Transcripts of the hearings of the other decisions already rendered by the Tribunal.

### 2. Appeal Number PA-990150-1

- All information contained in file 745/91;
- Decision Number 325/95; and
- Transcripts of hearings held by the Tribunal in rendering Decision Number 745/91 and Decision Number 325/95.

The Tribunal decided to grant access to the requested information and issued fee estimates, described as follows:

### 1. Appeal Number PA-990051-1

The Tribunal provided a fee estimate of \$973.80 for photocopying 4,869 pages of documents as follows:

- Materials in file 325/95R - 4,565 pages; and
- Hearing transcripts leading to Decision Number 745/91 - 304 pages.

The decision did not address audiotapes, the format in which the appellant requested the information.

### 2. Appeal Number PA-990150-1

The Tribunal provided a fee estimate of \$1,536.15, comprised of:

- Materials in file 745/91 - \$122.00 for photocopying;
- Materials in file 325/95 - \$913.00 for photocopying;
- Audiotape of hearing transcripts leading to Decision Number 325/95 - \$476.15;
- Audiotape of hearing transcripts leading to Decision Number 325/95I - \$25.00.

In its decision, the Tribunal stated that hearing tapes for Decision Number 745/91 no longer exist and addressed the audiotape format only partially.

The appellant appealed the Tribunal's decisions on the basis that it did not address the issue of providing access to the information in the audiotape format requested. The appellant claimed that all information should be provided to him on audiotape as a way of accommodating him for his visual impairment. During the mediation stage of the appeal, the Tribunal issued revised decisions addressing the issue of the appellant's request for audiotapes. The appellant narrowed the scope of his request to include only records which were created by the Tribunal with respect to his files. Specifically, he sought access to the hearing transcripts and decisions rendered by the Tribunal in files 745/91, 325/95I, 325/95, and 325/95R.

In July 1999, the Tribunal issued two revised access decisions containing a total fee estimate of \$1,530.85 for the cost of creating audiotapes from the responsive paper records. In their decisions, the Tribunal provided a breakdown of the fee estimate for producing audiotapes of the records and the cost of the audiotapes as follows:

- Decision Number 745/91 - \$102.70;
- Decisions 325/95I and 325/95 - \$5.40;
- Hearing Transcripts of April 25, 1995 for Decision Number 325/95I - \$25.00;
- Hearing Transcripts of October 15, 1997 for Decision Number 325/95 - \$476.15;
- Decision Number 325/95R and Hearing Transcripts of May 28, 1991 & October 9, 1991 for Decision Number 745/91 - \$921.60.

The appellant maintained his appeal of the fee estimates based solely on his belief that he is entitled to receive the information in the audiotape format without paying for it as an accommodation of his visual impairment. The appellant is not disputing the calculation of the fees, nor did he apply for a fee waiver under section 57(4) of the Act.

Following the issuance of the Tribunal's July 1999 decisions, the appellant narrowed the scope of his request once again to include only records created prior to January 31, 1996 (the date when the Act was amended to allow for the charging of fees for personal information). The appellant is of the view that he should not be required to pay fees for access to records created prior to the Act's amendment.

Before the repeal of section 57(2) of the Act on January 31, 1996, institutions were precluded from charging a fee where a requester sought access to their own personal information. After that date, however, requests for access to one's own personal information were subject to the fee provisions in the Act, regardless of the date when the records were created. The date of the request, rather than the date of the creation of the record, governs whether fees may be charged for personal information [Order P-1186]. Accordingly, I find that the provision precluding the charging of fees of access to one's own personal information which was contained in the former section 57(2) does not apply to the present requests.

I provided a Notice of Inquiry on audiotape in the French language to the appellant and a paper version in English to the Tribunal, seeking their representations on the issue of whether it is appropriate that the appellant be required to pay a fee for the audiotaped versions of the information which he has requested. I received representations from the Tribunal only.

As noted above, the Tribunal is not denying access to the information on the basis of any of the exemptions contained in the Act. In addition, the appellant is not disputing the amount of the fee estimate provided by the Tribunal, nor is he requesting a fee waiver under section 57(4) of the Act.

The sole issue in these appeals involves the interpretation of sections 48(3) and (4) of the Act, which provide that an institution is required to provide the opportunity to examine or to provide copies of the requested personal information to the individual to whom it relates "in a comprehensible form". The appellant suggests that the information sought is only comprehensible to him if it is provided in French and in an audiotape format, because of his visual impairment and that no fee ought to be charged by the Tribunal as an accommodation of his impairment.

## **DISCUSSION:**

### **MODE OF ACCESS**

Sections 48(3) and (4) govern the manner in which an institution is required to grant access following a request for an individual's own personal information. These sections state:

- (4) Subject to the regulations, where an individual is to be given access to personal information requested under subsection (1), the head shall
  - (a) permit the individual to examine the personal information; or
  - (b) provide the individual with a copy thereof.
  
- (4) Where access to personal information is to be given, the head shall ensure that the personal information is provided to the individual in a comprehensible form and in a manner which indicates the general terms and conditions under which the personal information is stored and used.

Section 48(3) of the Act indicates that when an institution receives a request for the personal information of the requester, it shall either permit the individual to examine the personal information or provide the individual with a copy thereof. In the present appeals, the Tribunal has agreed to provide a copy in accordance with section 48(3)(b), in the audiotape format requested, so long as the appellant remits the fee of \$1530.85, which is required under section 57(1) of the Act.

In Order M-1153, I addressed a situation where a requester sought access to general records, rather than his own personal information, in an electronic format, as opposed to the paper format in which the records were maintained. I found in that case that it was reasonably practicable for the institution to provide the requester with electronic versions of the paper copies of the records he was seeking through the use of scanning technology. I summarized my findings in that case as follows:

In my view, it would be reasonably practicable for the City to identify the paper records which are responsive to Parts 2, 4 and 5 of the first request and the second request and make them available to an outside firm, as referred to in its representations, to effect the transfer from paper copies to the desired electronic format, through the use of scanning technology. Although the issue of fees is not before me and I cannot, therefore, make a finding in this regard, the City may wish to take the position that it is entitled to rely on the fee provisions of the Act and the regulations, and on this basis provide the appellant with an interim fee estimate of the cost to effect the transfer of the records in accordance with the principles in Order 81 of this office, prior to actually incurring this expense.

One of the purposes of the Act, as set forth in section 1(a), is to provide the public with a right of access to information under an institution's control. Where a requester seeks access to records in a format different from that in which the records now exist, and it is reasonably practicable for the institution to effect the change in format, the institution is required to do so. By way of summary, I find that, in the absence of some extraordinary circumstances, it is reasonably practicable for an institution to provide electronic copies of records which exist only in paper form through the use of scanning technology.

In my view, these principles apply, even though this is a request for personal, rather than general, information. In the present appeals and in accordance with the principles expressed in Order M-1153, I find that it is reasonably practicable for the Tribunal to transfer the information sought from the existing paper copies to the audiotape format sought by the appellant. The Tribunal has agreed to do so, upon payment of the required fee. I find that the Tribunal has complied with the requirements of section 48(3) by granting access to the requested information in the format requested, notwithstanding its requirement for the payment of a fee, which is mandatory under section 57(1).

In my view, the fee waiver provision in section 57(4) of the Act may provide the appellant with the remedy he is seeking. He has chosen, however, not to avail himself of the opportunity to request a fee waiver. By enacting section 57(4), the Legislature has addressed the issue of whether or not fees are justified in the circumstances. As the Tribunal has not made a decision on whether to grant a fee waiver (since the appellant has not asked for one), I am unable to decide whether the Tribunal ought to have done so and I am unable to order it to waive the fees which are required by section 57(1). [Orders P-4, P-5, M-858 and M-914]

I will now consider whether the Tribunal has complied with its obligations under section 48(4) to provide the appellant with access to his personal information in a "comprehensible form." As stated above, the Tribunal has agreed to provide the personal information in the "comprehensible form" requested by the appellant, through the use of audiotapes. As such, I find that the Tribunal has satisfied its obligations under section 48(4) of the Act.

## **DUTY TO ACCOMMODATE UNDER THE ONTARIO HUMAN RIGHTS CODE**

In Order P-540, former Assistant Commissioner Irwin Glasberg discussed the application of section 11(1)(a) of the Ontario Human Rights Code (the Code) to assist him in determining whether the institution in that case had infringed upon the requester's rights by refusing to provide him with records in an enlarged print format. After finding that he was obliged to interpret section 48(4) according to the principles expressed in section 11(1)(a) of the Code, former Assistant Commissioner Glasberg went on to find that:

I have carefully reviewed the representations provided to me and considered all the circumstances of the appeal. I find that, had the Ministry interpreted section 48(4) of the Act based on an objective standard and applied the provision in this fashion without any effort to assist the requester, there would have arisen a restriction of the appellant's rights as a disabled person pursuant to section 11(1)(a) of the Code, and a prima facie breach of the provisions of the Code.

On the facts of this case, however, I believe that the Ministry recognized the appellant's special needs. I also find that the steps which the Ministry took to assist the appellant to comprehend his file allowed the appellant to effectively access his personal information. My conclusion, therefore, is that the Ministry's decision not to transcribe the appellant's entire file into 24 point type bold print does not represent a contravention of section 11(1)(a) of the Code.

As referred to above, any remedy which I could apply with reference to the Code would only be relevant as part of a discussion about the appropriateness of a fee waiver. In the present appeals, however, this issue is not before me as the appellant has not requested that the Tribunal waive its fee.

The Tribunal submits that the extent of its duty to accommodate the special needs of the appellant under section 11(1)(a) of the Code is already the subject of an ongoing proceeding before the Ontario Human Rights Commission (the OHRC). The appellant has brought a complaint to the OHRC alleging that the Tribunal has failed to accommodate his visual impairment by refusing to provide him with the records sought in these appeals in an audiotape format, at no charge. The Tribunal submits further that in order to avoid conflicting holdings and overlapping proceedings, I should defer to the OHRC as the appropriate forum to address the question of accommodation under the Code.

Unlike the situation in Order P-540, the appellant in these appeals has filed a complaint with the OHRC under the Code on the issue of the Tribunal's legal obligation to accommodate his special needs. In my view, it is appropriate that the OHRC address the question of accommodation. The OHRC has been investigating and attempting to mediate the appellant's complaint for several years and is, in my view, the most appropriate forum for the resolution of a question involving the interpretation of a provision in the Code.

For this reason, I decline to make a ruling as to the appropriateness of the steps taken by the Tribunal to accommodate the appellant's special needs under section 11(1)(a) of the Code.

**ORDER:**

I uphold the Tribunal's decision.

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

Donald Hale

Adjudicator

\_\_\_\_\_ April 26, 2000