



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-1870-I

Appeal PA-000202-1

Ministry of Natural Resources



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NATURE OF THE APPEAL:

The Ministry of Natural Resources (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following:

all records (including, but not limited to, documents, files, correspondence, memos, briefing notes, information notes, faxes, reports, email messages and email attachments) within the possession of the [Ministry] including the Minister's office and Ontario Parks relating to consideration of extending, or proposals to extend, cottage leases at Rondeau Provincial Park for the time period of January 1, 1998 to present. This will include for example, but not be limited to, records involving cottage leaseholders, the Rondeau Park Leaseholders' Association, and the Municipality of Chatham-Kent, in addition to records generated by provincial agencies.

In response to the appellant's request, the Ministry issued a fee estimate in the amount of \$930.00, which was calculated as follows:

Search time (14.5 hours x \$30 per hour)	\$435.00
Record preparation (5 hours x \$30.00 per hour)	\$150.00
Photocopies (1700 pages x .20 per page)	\$340.00
Total	\$930.00

[I note that there is a slight error in the Ministry's calculation and that the total, in fact, amounts to \$925.00. However, the Ministry has since issued a revised fee estimate and therefore this calculation is no longer relevant.]

The Ministry requested a deposit of \$465.00 and also advised the appellant that it has not yet reviewed the records and, therefore, no final decision has been made regarding access.

The appellant responded by asking the Ministry for some details about the types of responsive records that are available and the estimated cost, with a view to narrowing the scope of the request. At the same time, the appellant also sought a fee waiver on the basis that dissemination of the records will benefit public health [section 57(4)(c) of the *Act*] and set out his reasons in this regard.

The Ministry responded by providing the appellant with a description of nine categories of responsive records, and the approximate number of pages in each category. The Ministry also advised the appellant that the total number of pages would be reduced by approximately 30% because of duplicate records. In addition, the Ministry advised that approximately 20% of the total number of pages would be exempt from disclosure. The Ministry also made a decision not to waive the fees.

The appellant appealed the Ministry's fee estimate, in particular, the amount charged for search time. The appellant also appealed the Ministry's decision not to waive the fees. At the same time, the appellant

narrowed the scope of his request and advised the Ministry that he was only seeking access to certain categories of records.

In turn, the Ministry issued a revised fee estimate to the appellant based on the narrowed request. The revised fee estimate totalled \$730.00 and was calculated as follows:

Search time (13.5 hours x \$30.00 per hour)	\$405.00
Record preparation (3.5 hours x \$30.00)	\$105.00
Photocopies (1100 pages x .20 per page)	\$220.00
 Total	 \$730.00

The appellant was not satisfied with the revised fee estimate. Further mediation was not possible so the appeal was transferred to the adjudication stage.

This office initiated the inquiry by sending a Notice of Inquiry setting out the issues in the appeal to the Ministry. The Ministry submitted representations in response. I then determined that the appellant should be given an opportunity to respond to the Ministry's representations.

ISSUE:

The Ministry has requested that I withhold all of its representations from the appellant. The purpose of this interim order is to rule on this request.

DISCUSSION:

Sharing of representations procedure

The Notice of Inquiry cover letter to the Ministry states:

The representations you provide to this office may be shared with the appellant, unless there is an overriding confidentiality concern. The procedure for the submitting and sharing of representations is set out in the attached document entitled *Inquiry Procedure at the Adjudication Stage*. Please refer to this document when preparing your representations.

The Inquiry Procedure document states:

Adjudicator initiates inquiry

The Adjudicator will initiate an inquiry by sending a Notice of Inquiry to the party bearing the initial onus, as determined by the Adjudicator. The Notice of Inquiry sets out the issues in the appeal and seeks representations on these issues.

First party submits representations

The first party then has **three weeks** to submit representations. In its representations, the first party must indicate clearly, and in detail:

1. Which information in the representations, if any, the party wishes the Adjudicator to withhold from the second party; and
2. Its reasons for this request (see confidentiality criteria below).

The document later sets out the criteria for withholding representations, as follows:

The Adjudicator may withhold information contained in a party's representations where:

- (a) disclosure of the information would reveal the substance of record claimed to be exempt or excluded;
- (b) the information would be exempt if contained in a record subject to the *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act*; or
- (c) the information should not be disclosed to the other party for another reason.

For the purposes of paragraph (c) above, the Adjudicator will apply the following test:

- (i) the party communicated the information to the IPC in confidence that it would not be disclosed to the other party; and
- (ii) confidentiality must be essential to the full and satisfactory maintenance of the relation between the IPC and the party; and
- (iii) the relation must be one which in the opinion of the community ought to be diligently fostered; and
- (iv) the injury to the relation that would result from the disclosure of the information would be greater than the benefit thereby gained for the correct disposal of the litigation.

The Inquiry Procedure document details each stage of the inquiry. The document sets out the following process should the Adjudicator decide to seek submissions from the second party (in this case the appellant):

Adjudicator seeks representations from second party

The Adjudicator will send the same or a modified Notice of Inquiry to the second party, along with a copy of the first party's non-confidential representations, seeking representations from that party.

...

Adjudicator decides whether appeal should proceed to final stage

The Adjudicator will review the second party's representations and decide whether or not the second party has met its onus. If not, the Adjudicator will issue an order in favour of the first party. If so, the Adjudicator will proceed to final stage.

...

Adjudicator seeks reply representations from first party

The Adjudicator will send a customized Notice of Inquiry to the first party, along with a copy of the second party's non-confidential representations, seeking representations from that party.

Ministry's confidentiality request

The Ministry did not initially indicate whether its representations could be shared with the appellant or not. Upon being contacted by this office, the Ministry stated that it objects to the disclosure of its representations in their entirety. The Ministry did not, however, refer to any of the confidentiality criteria mentioned above. Instead, the Ministry took the position that it would be unfair to share its representations with the appellant with respect to the issue of fee waiver, as this would allow the appellant an opportunity to raise additional arguments with respect to this issue to which the Ministry would not have an opportunity to respond.

FINDINGS:

The first part of the Ministry's representations consists of background facts which would already be within the knowledge of the appellant. The representations also address the Ministry's fee estimate and provide detailed information relating to the Ministry's search for responsive records. The remainder of the submissions address the issue of fee waiver and consist of arguments of fact and law in response to the Notice of Inquiry and the appellant's submissions on this issue which he made at the request stage. None of this material appears on its face to fit any of the confidentiality criteria, and the Ministry has not provided any submissions on why any of its representations might be considered confidential. In the circumstances, I find that the confidentiality criteria do not apply to any of the Ministry's representations.

In response to the Ministry's concern about not having an opportunity to respond to the appellant's representations should he raise any additional arguments with respect to the fee waiver issue, as outlined above, if necessary, I will send a modified Notice of Inquiry to the Ministry, inviting further representations in reply.

Since I have found that the confidentiality criteria do not apply to any of the Ministry's representations, I intend to provide the appellant with a copy of the Ministry's representations, together with a Notice of Inquiry, no earlier than **March 8, 2001**.

Original signed by: _____

Irena Pascoe
Adjudicator

_____ February 21, 2001