



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-1457**

**Appeal MA-000250-2**

**Peel Regional Police Services Board**



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## **NATURE OF THE APPEAL:**

The Peel Regional Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to “a copy of the photographs” of the appellant taken by the Police’s Forensic Identification Services (FIS) during their investigation into an assault against the appellant. Access to the requested records was denied and the appellant appealed this decision to the Commissioner’s office. As a result of this appeal, on December 21, 2000 Adjudicator Katherine Laird issued Order MO-1382 in which she ordered the Police to “disclose the records” to the appellant by January 15, 2001.

In compliance with the order, the Police provided the appellant with colour laser copies of the requested photographs on January 15, 2001. The appellant then contacted the Police by telephone and advised that she was seeking 8" X 11" “glossy” copies of the photographs reproduced from the negatives held by the FIS. The Police indicated to her that the 15 glossy photographs sought are available to her through the FIS at a cost of \$30.80 each, for a total of \$462.00.

The appellant then contacted this office and advised that although she had been provided with copies of the photographs in colour laser form, she was seeking access to 8" X 11" glossy photographs made from the negatives held by FIS. This office then opened Appeal MA-000250-2 and informed the Police and the appellant that the issue of the payment of fees by the appellant in order to access the records ordered disclosed in Order MO-1382 remains in dispute.

The Police have taken the position that they have complied with their obligations to comply with the terms of Order MO-1382 by providing the appellant with colour laser copies of the requested photographs. The Police point out that the original request did not stipulate that the records sought were to be in the 8" X 11" glossy format. The Police further state that they have not provided the appellant with a fee estimate for the photographs in glossy format as contemplated by section 45(1) of the *Act*. Rather, the Police are of the view that, in accordance with their normal procedure when faced with a request for photographs maintained by the FIS, they advised the appellant that access to them would be granted upon payment of a fee of \$30.80 per photograph.

The Police argue that the request for 8" X 11" glossy photographs ought to be treated as a new request as they have complied with the disclosure provisions in Order MO-1382 by providing the appellant with colour laser copies of the photographs. Essentially, the Police take the position that the request for glossy photographs made to the FIS falls outside the scope of the *Act* and that the fee quoted of \$462 is not subject to appeal as it was not made under the fee provisions contemplated by the *Act*. Had the request been made in accordance with the *Act*, the Police indicate that they would have denied access to the glossy photographs under section 15(a) of the *Act* and that the issue of fees would not have been before this office.

I decided to seek the representations of the Police initially on the issue of whether the appellant’s request for 8" X 11" glossy photographs constitutes a new request which necessitates the payment of a second request fee. I also sought the submissions of the Police on the reasonableness of the fee estimate which it provided to the appellant for the provision of the photographs in the format which she is seeking, 8" X 11" glossy. The Police provided me with representations, which were shared in their entirety with the appellant, along with a copy of the Notice of Inquiry. The appellant did not submit any representations in response to the Notice.

## **DISCUSSION:**

### **HAVE THE POLICE COMPLIED WITH ORDER MO-1382?**

In Order M-236, former Adjudicator Asfaw Seife was faced with a similar situation involving a request for copies of photographs maintained by the York Regional Police. He held that the Police have an obligation under section 23(1) of the *Act* to provide the requesters with “actual colour prints of the photographs in question.” He then went on to make a determination as to whether the police were entitled to charge a fee for providing copies of the requested photographs and also to decide what the appropriate fee might be under the circumstances. The charging of fees is prescribed by section 45(1) of the *Act* and section 6 of Regulation 823, R.R.O. 1990 made under the *Act*.

Section 45(1) states:

If no provision is made for a charge or fee under any other Act, a head shall require the person who makes a request for access to a record to pay,

- (a) a search charge for every hour of manual search required in excess of two hours 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; and
- (d) shipping costs.

Section 6 of Reg. 823, R.R.O. 1990, under the *Act* (the Regulation), reads as follows:

The following are the fees that shall be charged for the purposes of subsection 45(1) of the *Act*:

1. For photocopies and computer printouts, 20 cents per page.
2. For floppy disks, \$10 for each disk.
3. For manually searching for a record after two hours have been spent searching, \$7.50 for each fifteen minutes spent by any person.
4. For preparing a record for disclosure, including severing a part of the record, \$7.50 for each fifteen 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 fifteen minutes spent by any person.
6. For any costs, including computer costs, incurred by the institution in locating, retrieving, processing and copying the record if those costs are specified in an invoice received by the institution.

Where a requester appeals the institution's decision to charge a fee, it is my responsibility under section 45(5) of the *Act* to ensure that the fee is one that the requester is required to pay under the *Act*, that the amount is calculated in accordance with the schedule of fees established under the Regulation and that the estimates are reasonable. The burden of establishing that the fee estimate is in accordance with the *Act* rests with the institution.

In my view, an institution processing a request is only required to charge a fee for the costs that are specifically listed in section 45(1) of the *Act*, and can only charge the amounts established in the schedule of fees under the Regulation for those costs.

Section 45(1)(c) requires the Police to charge a fee for costs incurred in copying a record and section 6(6) of the Regulation allows the Police to recover any costs for copying of a record if those costs are specified in an invoice received by the Police. The Regulation does not specifically establish a fee for making copies of photographs where the copying is done "in-house" by the Police.

In Order M-236, Adjudicator Seife was not satisfied that he had been provided with sufficient evidence to substantiate the fee suggested by the York Regional Police of \$20 per photograph. He was of the view that this amount was not in accordance with the provisions of section 45(1) and Section 6 of Regulation 823.

In the present appeal, the Police have provided me with very detailed information with respect to the calculation of the fee provided to the appellant. In addition to a breakdown of the costs associated with the preparation of photographs in the format requested by the appellant, the Police have provided me with a detailed explanation of the mechanics involved in reproducing them. The Police indicate that the material costs involved in reproducing the photographs in the glossy 8" X 10" format requested is approximately \$3.00 per photograph. The labour costs involved are calculated at various hourly rates, depending on the person who performs each function in the reproduction process. The Police have fixed the amount of this cost at \$30.80 per photograph and have provided me with an indication of the amount of time required to perform the reproduction of the requested photographs in the format sought by the appellant.

As noted above, section 45(1) and section 6 of Regulation 823 prescribe the amount which may be charged by an institution for access to a record. In my view, the Police are entitled to charge a fee for the reproduction of the requested photographs under section 45(1)(b), for the recovery of the "costs of preparing the record for disclosure". The amount of the fee is then prescribed by paragraph 4 of section 6 of Regulation 823, in the amount of "\$7.50 for each 15 minutes spent by

any person". The Police indicate that "it took approximately 15-20 minutes to complete the print process relative to the production of each of the appellant's photographs". Accordingly, I am prepared to allow a fee of \$7.50 for each of the 15 photographs requested by the appellant.

In Order M-236, Adjudicator Seife declined to allow the York Regional Police to charge a fee for the "use of material and equipment involved in the process of making copies." In the present appeal, the Police submit that because the appellant has specifically requested that the photographs be reproduced on glossy paper, they are required to use special paper, rather than plain paper as would be the case if the format was not so specified. In my view, this is a reasonable expense and I will allow the amount of \$3.00 per photograph to cover the cost of reproducing them in the glossy format requested by the appellant.

In conclusion, I uphold the decision of the Police to charge a fee of \$10.50 per photograph, for a total of \$157.50.

**ORDER:**

1. I uphold the decision of the Police to charge a fee in order to comply with the requirements of Order MO-1382. I do not uphold the fee estimate of the Police in the amount of \$462.00.
2. I have revised the fee which the Police may charge the appellant for processing her request to \$157.50.

Original signed by: \_\_\_\_\_  
Donald Hale  
Adjudicator

\_\_\_\_\_  
July 25, 2001