



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-1990

Appeal PA-010002-2

Ministry of the Solicitor General



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NATURE OF THE APPEAL:

The Ministry of the Solicitor General (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to all Ontario Provincial Police (OPP) orders (the orders). The appellant indicated that his intention is to view the orders and to take notes, but not to obtain copies of them.

In situations where records are too expensive to produce for inspection, either because of the size of the record or its physical location, the head of an institution can provide a fee estimate under section 57(3) of the *Act*, and an interim decision on access.

Because of the large volume of responsive records, the Ministry provided the appellant with a fee estimate of \$7,109.50 and an interim access decision, indicating that portions of the orders would likely be exempt from disclosure under sections 14 (law enforcement), 21 (invasion of privacy) and 22 (information publicly available) of the *Act*.

The appellant appealed the fee estimate. Since the Ministry made only an interim decision on access, only the fee estimate is at issue in the appeal, not the applicability of the exemptions.

The orders consist of 76 parts totaling 3,183 pages. Thirty-six parts contain information related to OPP policy and cover such topics as administration, telecommunications, disaster procedures, prisoner care, and explosives disposal. Forty parts contain no information. Of these, some parts have been given a subject heading, but are empty; others are completely reserved for future orders. Given the number and variety of the orders, the Ministry sought to assist the appellant to narrow his request by providing him with an index of the subjects discussed in each part. The Ministry asked the appellant to use the index to identify those parts to which he was seeking access. The appellant re-iterated that he wished to see all the orders.

During the mediation process, the Ministry revised its fee estimate to \$2,310.00 based on a review of a representative sample of the orders. The Ministry advised that the sample consisted of 30 pages, made up of 10 randomly selected pages from each of Parts 2, 10 and 15. Part 2 (Protocol and Dress) discusses the topics of “order of dress” and “dress of a member”. Part 10 (Operations) deals with drug enforcement, and Part 15 sets out guidelines on the development and maintenance of informants.

From its 30-page sample, the Ministry identified four pages from Part 2 (40%), eight pages from Part 10 (80%), and 10 pages from Part 15 (100%) as requiring severances. However, on the copy provided to this office, the Ministry had identified nine pages (90%) from Part 10 as requiring severances, but acknowledged only eight in its calculation. The correct number of pages in the sample as identified by the Ministry as requiring severance is therefore 23. Extrapolating from the Ministry’s sample, 76% of the pages (2,419 pages) will require severances. Using the Ministry’s estimate of two minutes per page to carry out the severances, it will take 80 hours to complete the orders for a fee estimate of \$2,400.00. The Ministry also provided an estimate for photocopying costs. However, since the appellant indicated that he is not seeking a copy of the orders, the photocopying costs are not chargeable and therefore are not at issue.

The Ministry also advised that it no longer expected to claim the exemptions in sections 21 and 22 of the *Act*, but would likely rely on the exemption in section 14 and an additional discretionary exemption in section 20 (danger to health and safety) to withhold portions of the record.

I initially sent a copy of a Notice of Inquiry that set out the issues in this appeal to the Ministry and received representations. I then sent a Notice together with the Ministry's entire representations to the appellant who also sent in submissions. Later, to clarify the nature and scope of the orders, I went to the OPP headquarters in Orillia, Ontario to view them. I worked from a hard copy of all of the orders prepared by a representative of the OPP.

DISCUSSION:

Introduction

The charging of a fee is authorized by section 57(1) of the *Act* and section 6 of Regulation 460 under the *Act*. The relevant portions state:

57. (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,

(b) the costs of preparing the record for disclosure;

.

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:

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4. For preparing a record for disclosure, including severing a part of the record, \$7.50 for each 15 minutes spent by any person.

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In Order 4, former Commissioner Sidney B. Linden found that section 57(1)(b) permits an institution to charge for time spent actually making severances to the records, but not for time spent reviewing records to decide whether or not an exemption applies.

In addition, this office has generally accepted that it takes two minutes to sever a page that requires multiple severances (see, for example, Orders PO-1721 and PO-1834).

Finally, while section 10(2) requires a head to disclose as much of the record as can reasonably be severed without disclosing the exempt information, this office has indicated that a record should not be severed where to do so would reveal only "disconnected snippets", or "worthless", "meaningless" or "misleading" information (see Order PO-1735, Order PO-1663 and *Ontario*

(Minister of Finance) v. Ontario (Information and Privacy Commissioner) (1997), 102 O.A.C. 71 (Div. Ct.).

Representations

In its representations, the Ministry explains that the orders are maintained in an electronic format and are accessible only by an approved person using a confidential password. As a result, it had to create a hard copy of the representative orders from the electronic version in order to respond to the request. It submits that, if the appellant proceeds, it intends to review all of the orders line-by-line to ensure that OPP operations are not compromised and the public is not placed at risk by the disclosure of highly confidential information.

The appellant provided representations, but they did not address the issue of the fee estimate.

Findings

In my view, the Ministry's sample of 10 pages from each of three orders is not reasonably representative of the whole record. Two of the three parts (Parts 10 and 15) selected by the Ministry in its sample deal respectively with drug enforcement and police informants, topics that are inherently sensitive. Based on my review of the index, it appears that only a quarter of the orders deal with topics of a similarly sensitive nature. In addition, I do not accept the Ministry's assertion that 90-100% of these types of orders would require severances. While the Ministry must review the records line-by-line before making its final decision, as stated above, it is only the time spent *severing* that can be charged to the appellant. As indicated above, severance is not appropriate where to do so would reveal only "disconnected snippets" and, based on my review and on the nature of the anticipated exemption claims, it appears unlikely that the Ministry could reasonably sever the more sensitive orders.

In my view, a similar conclusion applies to orders that are inherently of a non-sensitive nature. These orders are likely to be disclosed in full, requiring few if any severances.

Based on the above principles, I conducted my own review of the orders to arrive at a reasonably representative sample of the whole and to determine a reasonable fee estimate. I divided the orders into three categories: (i) those likely to consist mainly of sensitive information, resulting in most if not all of the pages being withheld in their entirety; (ii) those likely to consist mainly of non-sensitive information, resulting in most if not all of the pages being disclosed in their entirety; and (iii) those falling somewhere between (i) and (ii). I found that nine orders (375 pages) fell in category (i), three orders (578 pages) in category (ii), and 24 orders (2,230 pages) in category (iii).

I then randomly chose three orders from each of category (i) and (iii) for review, and reviewed all three of the category (ii) orders. The orders that I reviewed from each category are described as follows: (i) disaster, explosives disposal and firearms procedures; (ii) awards granted by the OPP, the affiliation between the OPP and Scouts Canada, and the employment positions in the

OPP; and (iii) goods available from OPP stores, court case management and accommodation of pregnant members.

My review confirmed that it is unlikely the Ministry could reasonably sever any of the pages in the samples from categories (i) and (ii). Accordingly, these pages should not be included in estimating the number of pages that will require severance.

With regard to category (iii), I found that the Ministry could reasonably expect to sever approximately 20% of the pages. Extrapolating from this sample, I find that a reasonable fee estimate for making severances is \$446.00, based on the following calculation:

Category (iii) consists of 2,230 pages; 20% of those (446) are likely to require severances; 446 pages at two minutes per page (the generally accepted severance standard) = 892 minutes, at \$7.50 per fifteen minutes = \$446.00.

This request is only at the stage of a fee estimate and interim access decision. If the appellant proceeds with the request, the Ministry may need to sever either fewer or more pages than I have estimated, after reviewing the record line-by-line. In that event, the final fee may need to be adjusted accordingly. It must be remembered that the purpose of the exercise under section 57(3) is to arrive at a "reasonable estimate". In my view, the methodology employed by the Ministry did not lead to a reasonable estimate, and I hope that my reasons in this order will provide guidance for the Ministry and other institutions in future cases of a similar nature.

I also note that my findings here with regard to the likely applicability of the section 14 and 20 exemptions are no more than preliminary views for fee estimate purposes, and are not binding on the Ministry or the appellant (except to the extent they apply to the fee estimate). Should the appellant decide to proceed and pay the 50% deposit, the Ministry's final fee decision and/or its decision on the applicability of exemptions may be the subject of an appeal to this office.

ORDER:

1. I do not uphold the Ministry's fee estimate of \$2,310.00.
2. The fee estimate the Ministry may provide to the appellant is \$446.00.

Original signed by: _____
Dawn Maruno
Adjudicator

January 30, 2002