



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-1511**

**Appeal MA-010327-1**

**London Police Services Board**



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## **NATURE OF THE APPEAL:**

This is an appeal from a decision of the London Police Service (the Police), under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The requester (now the appellant) made a request for access to certain documents. After receiving a fee statement from the Police, the appellant requested a waiver of fees under section 45 of the *Act*. The Police turned down his request, and the appellant has appealed this denial of a fee waiver.

I sent a Notice of Inquiry to the appellant, initially, inviting his representations on the issue of whether the decision to deny his request for a fee waiver should be upheld. I received nothing from the appellant by the time specified in my letter for the receipt of representations. This office contacted the appellant to ensure that there had been no unavoidable delay in sending his representations, and after speaking to him, granted an extension of time in order to provide representations to me. More than a week has passed since this extended deadline, and still nothing has been received.

## **DISCUSSION:**

Section 45 of the *Act* provides, in part:

(4) A head shall waive the payment of all or any part of an amount required to be paid under subsection (1) if, in the head's opinion, it is fair and equitable to do so after considering,

- (a) the extent to which the actual cost of processing, collecting and copying the record varies from the amount of the payment required by subsection (1);
- (b) whether the payment will cause a financial hardship for the person requesting the record;
- (c) whether dissemination of the record will benefit public health or safety; and
- (d) any other matter prescribed in the regulations.

(5) A person who is required to pay a fee under subsection (1) may ask the Commissioner to review the amount of the fee or the head's decision not to waive the fee.

In the Notice of Inquiry, I provided guidance based on prior decisions of this office on the issue of fee waiver. Among other things, I stated:

Factors for the IPC to consider in reviewing a decision to deny a fee waiver request include:

- the extent to which the actual cost of processing, collecting and copying the records varies from the amount charged by the institution;

- whether the payment will cause financial hardship for the requester;
- whether dissemination of the records will benefit public health or safety;
- whether the requester is given access to the records;
- if the amount charged is under \$5, whether the amount of the payment is too small to justify requiring payment.

In addition to the above, section 45(4) of the *Act* also requires consideration of whether it would be “fair and equitable” to waive the fee. Previous orders have set out a number of factors to be considered to determine whether a denial of a fee waiver is “fair and equitable”. These factors are:

- the manner in which the institution attempted to respond to the appellant’s request;
- whether the institution worked with the appellant to narrow and/or clarify the request;
- whether the institution provided any documentation to the appellant free of charge;
- whether the appellant worked constructively with the institution to narrow the scope of the request;
- whether the request involves a large number of records;
- whether or not the appellant has advanced a compromise solution which would reduce costs; and
- whether the waiver of the fee would shift an unreasonable burden of the cost from the appellant to the institution.

[Order M-408]

Other decisions have stated:

Having considered the representations of the parties and based on the evidence provided to me, it is my view that it would not be “fair and equitable” to waive the fee, in the circumstances of this appeal. In coming to this conclusion, I have considered the manner in which the Board has attempted to respond to the appellant's request; the fact that the request involves a very large volume of records; that the appellant was not prepared to narrow her request but insisted on receiving raw data which requires extensive searches and time consuming severance procedures; that the appellant has not advanced a compromise solution which would reduce the costs; that the actual cost of producing the records exceeds the fee estimate itself and that waiving of the fee will shift an unreasonable burden of the cost of access from the appellant to the Board, resulting in significant interference with the operations of the Board.

[Order M-166]

I also set out:

You are asked to provide detailed representations on whether the fee waiver decision should be upheld in light of the above and the circumstances of this particular appeal.

**The appellant is asked to comment on the availability of a fee waiver with reference to the provisions of section 45(4) of the *Act*. In particular, if the appellant is relying on "financial hardship" he should provide detailed evidence regarding his financial circumstances.**

**In Order 31 and subsequent orders it has been held that it is up to the requester to provide adequate evidence to support a claim for a fee waiver. In view of that, it would be advisable for the appellant to submit any documents or other evidence which would support an entitlement to a fee waiver.**

**In his letter to this office of September 28, 2001, the appellant states that he provided his tax returns for the past 3 years. This office has no record of receiving these tax returns. If the appellant wishes to rely on these tax returns, he is asked to re-send them. [emphasis in original]**

As indicated above, the onus is on an appellant in this type of case to provide evidence to support a claim for fee waiver. In this case, I have no evidence before me that casts any doubt on the decision by the Police to deny a fee waiver.

This appeal must accordingly be dismissed.

Original signed by:  
Sherry Liang  
Adjudicator

February 15, 2002

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