



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2049

Appeal PA-010434-1

Ontario Human Rights Commission



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NATURE OF THE APPEAL:

The appellant submitted a request to the Ontario Human Rights Commission (the OHRC) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following:

1. a year-by-year total of all employees of the Commission from 1990-2000;
2. a year-by-year total of all non-secretarial employees of the Commission from 1990-2000;
3. a year-by-year breakdown of numbers of investigative, mediation and intake officers (and other officers) from 1990-2000;
4. a year-by-year breakdown of complaints taken to boards of inquiry on the following two grounds: (a) age discrimination (b) racial discrimination; and
5. a year-by-year breakdown of the number of offices open to the public from 1990-2000.

In response to the request, the OHRC advised the requester that it would take approximately 8.5 hours to search and prepare the information for disclosure. In particular, the OHRC stated:

The Commission would be happy to research your request and to compile the data in a one to two page chart. However, the information is not readily available and some may be difficult to locate...

The OHRC therefore issued a fee estimate totaling \$255.40, which consisted of \$255.00 for search and preparation (8.5 hours @ \$30 per hour) and \$0.40 for photocopying (2 pages @ \$0.20 per page).

On the basis of its decision letter, it appears that the OHRC has decided to grant access to the requested information.

The appellant appealed the OHRC's decision on the basis that the fee was too high. In addition, the appellant suggested that he would be unable to pay this amount. In his letter of appeal, the appellant proposed that the fee could be reduced by limiting the time frame of the records sought to the period 1995 to 2000.

During the mediation stage of the appeal, the appellant confirmed that he would narrow the scope of parts 1 to 3 of his request to cover only the years 1995-2000. The appellant also agreed to narrow these parts of his request to include only information from the OHRC payroll records. The appellant also agreed to exclude part 4 from his request, after the OHRC explained that the information responsive to this part of the request is available in its annual reports. The appellant further narrowed part 5 of his request to include only: (1) the number of offices that were open to the public in 1995 and; (2) the number of offices currently open to the public.

The OHRC advised the mediator that it would take approximately seven hours to search for and prepare the information responsive to the appellant's narrowed request. This portion of the OHRC's fee estimate was, therefore, reduced to \$210.00 (7 hours @ \$30 per hour).

The appellant subsequently advised the mediator that he was not satisfied with the revised fee estimate and requested that the appeal proceed to the adjudication stage. In doing so, the

appellant confirmed that he was only appealing the amount of the fee. The appellant's financial circumstances are, therefore, not at issue in this appeal as he is not seeking a fee waiver under section 57(4) of the *Act*.

The Commissioner's office sought the representations from the OHRC, initially and provided it with a Notice of Inquiry. The OHRC submitted representations in response, which were subsequently sent to the appellant along with a copy of the Notice. The appellant did not respond.

DISCUSSION:

FEES

Section 57(1) of the *Act* requires an institution to charge fees for requests under the *Act*. That section reads:

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,

- (a) the costs of every hour of manual search required 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;
- (d) shipping costs; and
- (e) any other costs incurred in responding to a request for access to a record.

More specific provisions regarding fees are found in section 6 of Regulation 460 under the *Act*, which reads:

The following are the fees that shall be charged for the purposes of subsection 57(1) of the *Act* for access to a record:

1. For photocopies and computer printouts, 20 cents per page.
2. For floppy disks, \$10 for each disk.
3. For manually searching a record, \$7.50 for each 15 minutes spent by any person.

4. For preparing a record for disclosure, including severing a part of the record, \$7.50 for each 15 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 15 minutes spent by any person.
6. The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the record if those costs are specified in an invoice that the institution has received.

Representations of the OHRC With Respect to the Fee Estimate

In support of its fee estimate, the OHRC submits the following information:

The OHRC sought the advice of a financial analyst in its employ in addressing the questions pertaining to staff complements and locations.

As the financial analyst, for the Commission, the employee has had access to other information, such as salaries of individuals, held in some of these records to prepare reports for the Commissioner's purposes relating to other issues.

The Commission's retention requirement for in office payroll records is one year. The budget records are for the current year plus the last two fiscal years. The salaries and wages forecasting records by the branch/office are kept by fiscal year on hard copies and computerized spreadsheets for some fiscal years. Records for approved positions by fiscal year and by branch/office are kept on hard copies and computerized excel spreadsheets.

The Commission has no access to computerized/corpay records going back to 1995. In order to comply with the request, the Commission would have to conduct a manual search for the hard copies or the computerized excel spreadsheets of the salaries and wages forecasts and approved positions for each of the requested fiscal years. Further, the Commission will have to try and locate other previously prepared files/documents on approved staffing positions to verify conflicting information. For example, staff may have been seconded from a clerical position to an Intake Officer position. A human rights officer may be seconded to another branch within the Commission or to another ministry during a given time period within the year.

...

To respond to the request, the information has to be extracted from the annual branch/office records to determine the total staff working for the entire Commission within a given year and the total staff assigned to each position within the year.

In order to prepare the records for disclosure, the OHRC submits that it would be required to:

. . . the numerical information has to be manually extracted from the manual records and computerized excel spreadsheets of the annual branch/office records to determine the total for the entire Commission. The information in the various records will have to be reconciled and amalgamated before the information can be provided to the requester.

Findings

It is clear from the submissions of the OHRC that it will be required to conduct an extensive search of its record-holdings to locate the information sought by the appellant. The amount of time estimated by the OHRC to conclude these searches is a relatively modest seven hours. Based on the submissions of the OHRC, I find that in order for it to compile the data sought, it would be required to review its computerized spreadsheets and hard copies for information pertaining to each of its branches and offices and then assemble the responsive information into a format which is comprehensible to the appellant.

In my view, the fee estimate provided to the appellant for the work to be performed in extracting the information sought from its data systems is reasonable. The work to be undertaken is time-consuming and will require the individual review of a large number of documents, given the five-year period sought. I find that the fee estimate is reasonable under the circumstances and I uphold the OHRC's decision to charge a fee of \$210.00 for this information.

ORDER:

I uphold the OHRC's fee estimate of \$210.00.

Original signed by:
Donald Hale
Adjudicator

September 25, 2002