



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER PO-2139**

**Appeal PA-020005-1**

**Ministry of Transportation**



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## **NATURE OF THE APPEAL:**

This appeal concerns a decision of the Ministry of Transportation (the Ministry) made pursuant to the provisions of the *Freedom of Information and Protection of Privacy Act* (the *Act*). The requester (now the appellant) had sought access, through her legal counsel, to “detailed information as to the design, construction, signage, safety analysis and other details relating to the [Highway 407/403] interchange”.

By way of background, the appellant was involved in a motor vehicle collision at the Highway 407/403 interchange. Attached to the request was a list of 45 items requested under the following headings: Policies and Protocols, Planning and Design Studies, Traffic Data, Geometric Design, Incident Management Protocols, Communications/Correspondence, Traffic Control for the ramp before and after the collision, General Collision Experience and Costa Collision.

The Ministry acknowledged receipt of the request and advised that items 23 and 38-45 were transferred to the Ministry of Public Safety and Security for a response. The Ministry also requested clarification of items 9 and 24 of the request. The appellant provided clarification in a subsequent letter. The Ministry then issued a fee estimate of \$4,025.50 and indicated that this was an interim decision and that some exemptions might apply. The Ministry also advised the appellant that she could make an application for a fee waiver. The Ministry indicated that records responsive to items 8, 15, 16, 25, 29 and 32 did not exist and that records responsive to items 3 and 4 could be obtained through a named publisher. The appellant requested a fee waiver. The Ministry denied the appellant’s request.

The appellant appealed the fee estimate and the decision to deny a fee waiver.

Mediation was not successful and the file was moved to inquiry.

I, initially, sent a Notice of Inquiry to both the appellant and the Ministry, seeking representations from the appellant on the issue of fee waiver and from the Ministry on the issue of fee estimate. I received representations from the appellant and the Ministry on these respective issues and the parties agreed to share their representations in their entirety. The Ministry also issued a revised fee estimate of \$3,069.00 and provided a breakdown for this fee in its decision letter. The Ministry indicated in its decision letter that this was an interim decision and that some exemptions might apply. The Ministry’s representations acknowledge and address the revised fee estimate.

I then sought representations from the Ministry on fee waiver and from the appellant on fee estimate. I received representations from the parties on these respective issues.

## **DISCUSSION:**

### **FEE ESTIMATE**

#### **Introduction**

The charging of fees is authorized by section 57(1) of the *Act*, which states:

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.

Section 6 of the Regulation also deals with fees. It states, in part, as follows:

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.  
...
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.  
...

This office may review the amount of the fee, and may uphold the decision or vary it.

### **Ministry's Initial Representations**

The Ministry has provided a detailed breakdown of the calculation of its fee estimate of \$3,069.00. The calculation is broken down into the following six categories:

- Tab 1 – Highway Engineering/Central Region
  - \$810 search time/preparation time
  - \$125 photocopying

- Tab 2 – Planning and Environmental/Central Region
  - \$435 search/preparation time
  - \$96 photocopying
- Tab 3 – Highway Design Office
  - \$120 search/preparation time
  - photocopying fee waived
- Tabs 4 and 5 – Traffic Office/Central Region
  - \$975 search/preparation time
  - \$59 photocopying
  - \$20 computer disks
- Tab 6 – Strategic Highways Management Office/Central Region
  - \$405 search/preparation time
  - \$24 photocopying

The calculation of fees for each category is supported by affidavits from Ministry employees who claim to be knowledgeable about the type and content of the records requested and who were directly involved in the calculation of the fee. Each affidavit is appended as a “tab” to the Ministry’s representations. Each affidavit describes how the records are stored, the nature and extent of the searches required and an estimate of the search time required to prepare the records and related photocopying charges.

***Tab 1 – Highway Engineering/Central Region***

The Ministry has provided an affidavit from an employee who is a Project Manager with the Ministry’s Highway Engineering Office, Central Region. The affidavit states that historical technical reports are stored in cabinets designated for the particular highways involved. Reports stored in the cabinet designated for Highway 403 were first reviewed and approximately 90 reports were found regarding distinct or overlapping projects undertaken for the span of Highway 403 between Mississauga and Brantford. In examining some of the relevant Highway 403 reports, it was found that an additional 90 technical reports on the Queen Elizabeth Way (QEW) were referenced. The affidavit goes on to state that both the Highway 403 and QEW reports range from 15 pages to 400 pages in length and that it takes between two and 20 minutes to search and determine responsiveness for each report. As well, the affidavit states that there are also recent reports, project-specific correspondence and technical memos pertaining to three related projects, each comprised of 10 project files and consisting of 15 to 40 documents. Personal information and non-responsive information would need to be severed. The affidavit states that 27 hours of search and preparation time would be required to deal with the records responsive to this category of the request (items 5, 6, 9, 10, 17 to 21, 24, 26, 27 and 30 of the appellant’s request), at a cost of \$810.00. The estimated number of pages to be photocopied is 625 at a cost of \$125.00. Therefore, according to the affidavit, the total fee for this category is \$935.00.

***Tab 2 – Planning and Environmental/Central Region***

The Ministry states that this category relates to item 7 of the appellant's request ('Ministry environmental assessment studies encompassing the Highway 403 – QEW interchange from 1970 to the present'). The Ministry has provided an affidavit from an Environmental Planner it employs. This individual's duties include the preparation of environmental documents for the planning, design, construction and monitoring of transportation facilities. She is responsible for projects within the vicinity of the QEW/Highway 403/Highway 407 (Freeman) interchange. The affidavit states that this employee conducted a manual search through approximately 40 environmental assessment files for projects in the vicinity of the QEW/Highway 403/Highway 407 (Freeman) interchange. The affidavit states that as a result of the search seven responsive records (environmental assessment documents) were identified, six of which are cerlox bound while one is a stapled form. The fee estimate for this category totals \$531, comprised of 14.5 hours of search time (\$435) and 480 pages of photocopying (\$96).

***Tab 3 – Highway Design Office***

The Ministry indicates that this category relates to item 2 of the appellant's request ('Ministry directives examining the problems with left-hand exits and entrances on freeways'). The Ministry includes the affidavit of an employee who is a Safety Design Engineer with the Ministry. This individual states that the necessary steps to locate applicable directives include the perusal of the respective tables-of-contents and identification of directives that may be applicable to the subject (1.0 hours) and then the examination of those identified directives (3.0 hours) to ascertain responsiveness and to sever non-responsive information. As stated above, the Ministry has agreed to waive the photocopying fee. Therefore, the total cost for this category is \$120.

***Tabs 4 and 5 – Traffic Office/Central Region***

The Ministry relies on the affidavit of an employee who is the Acting Area Traffic Manager for Area 2 in the Ministry's Central Regional Traffic Office to provide an estimate for items 1, 24, 31 and 37 of the appellant's request (Tab 4). These items deal generally with Ministry research regarding problems with left-hand exits and entrances on freeways, public complaints during a specified period, traffic control documentation in the Ministry's possession regarding eastbound traffic, and collision diagrams for a specified time frame and location.

Another Ministry employee who is the Senior Project Manager in the Central Region Traffic Office, Traffic Planning and Information Services Section and who is responsible for the co-ordination of all freedom of information requests provided the estimate for items 11, 13, 14, 35 and 36 (Tab 5). These items concern speed studies, ATR counts and classification (manual) counts for specified time frames, and summary collision experience and motor vehicle accident reports for specified time frames and locations.

*Tab 4*

The employee's affidavit states that information responsive to item 1 is stored electronically and in hard copy format. The affidavit states further that the collision analyses in respect of left hand exits on freeways are contained in electronic and hard copy files that contain all collision information dealing with the Highway 407 ramp and area. Consequently, these files will have to be gone through to extract the information relating specifically to left-hand exits and entrances. The relevant information cannot be located with a computerized "word" search. The affidavit indicates that one hour will be required by each of the Traffic Design Engineer and Area Traffic Manager to locate and prepare the information responsive to item 1. The fee estimate for this item totals \$61.00, comprised of 2.0 hours of search/preparation time (\$60.00) and five pages of photocopying (\$1.00).

The affidavit states that the information responsive to item 24 can be stored in a number of files in the Traffic Office's central filing cabinets, based on year and subject. A total of 48 files, each containing between 12 to 200 documents, need to be searched manually. Some of the files are located offsite in an archive storage facility and would need to be retrieved. As well, the Area Traffic Manager has some incoming public enquiries contained in two large 3-ring binders that must be searched manually for items pertaining to Highway 403. As these records contain personal information, time will have to be spent in severing personal information prior to release. The fee estimate for this item totals \$244.00, comprised of 8 hours of search/preparation time (\$240.00) and 20 pages of photocopying (\$4.00).

The affidavit indicates that information responsive to item 31 can be obtained from photographs, strip maps, contract documents and signing diaries. It is estimated that three project managers/analysts from the Traffic Office and Construction Office will spend an hour each to search for all available information. The fee estimate for this item is \$94.00, comprised of 3.0 hours of search/preparation time (\$90.00) and approximately 20 pages of photocopying (\$4.00).

The affidavit states that information responsive to item 37 exists. The diagrams were prepared manually and are stored in project files in the Area Manager's office and the Project Manager's office. The affidavit indicates that these individuals will each spend half an hour to conduct this search. The fee estimate for item 37 totals \$32.00, comprised of 1.0 hours of search/preparation time and 10 pages of photocopying (\$2.00).

*Tab 5*

With respect to item 11, the affidavit states that various field studies for the QEW and Highway 403 have been undertaken by Ministry staff. There are also several consultant reports available in hard and electronic format. The affidavit indicates that a total of 2.0 hours will be required to locate the records for the two freeways by loading, searching and saving the information. One hour will be required to cut and paste all relevant information for both highways and to create a separate file in a readable format. The fee estimate for item 11 totals \$94.00, comprised of 3.0 hours of search/preparation time (\$90.00) and 20 pages of photocopying (\$4.00).

The affidavit states that the Ministry has received requests in the past for the type of information requested in item 13 and that this experience has been of assistance to the Ministry in providing

this estimate. Both manual and electronic searches are required. It is estimated that 2.0 hours will be required to carry out the manual and electronic search of the data and to verify any responsive information. Two Project Managers who are familiar with these records were consulted in preparing the fee estimate. The fee estimate for item 13 totals \$62.00, comprised of 2.0 hours of search/preparation time (\$60.00) and 10 pages of photocopying (\$2.00).

The affidavit states that the Ministry has, in the past, received requests for the type of information requested in item 14 and that this experience was valuable in making an estimate. This affidavit states that the Project Manager in charge of data collection and processing has estimated that it will take 1.5 hours to search the required information contained in cardex files and 30 minutes to search electronic files. Again, two Project Managers familiar with this item were consulted in preparing the fee estimate. The fee estimate for item 14 totals \$77.00, comprised of 1.5 hours of search/preparation time (\$45.00), 30 minutes of computer programmer time (\$30.00) and 10 page of photocopying (\$2.00).

The affidavit states that the Ministry has had experience in the past with requests for the information requested in item 35 and that this experience was helpful in making an estimate. Records responsive to this item are available in electronic format for a portion of the time frame requested by the appellant. It is estimated that 2.0 hours will be required to summarize the responsive records. The responsive records will be stored on two floppy disks. The fee estimate for item 35 totals \$140.00, comprised of 2.0 hours of computer programmer time (\$120.00) and two floppy disks (\$20.00).

The affidavit states that the Ministry has received requests for the type of information requested in item 36 and that this experience was of assistance in preparing the fee estimate. Hard copies of the motor vehicle accident (MVA) reports are stored in the Traffic Office generally for a period of three years. Therefore, the more recent records are available on-site while the older records are archived on microfiche off-site. This Ministry employee estimates that there should be 125 records stored on microfiche for a two-year period. According to this employee, the process of retrieval from microfiche is a labour intensive two-step process and may take four hours to search, prepare and extract the required collision records. In addition, MVA reports for a specified period and location were obtained directly from a Hamilton police detachment. These records can be searched to pull out the collisions that occurred during this period for the location of interest to the appellant. This employee indicates that the Project Manager responsible for collision data was consulted in preparing the estimate for item 36. The fee estimate for item 36 totals \$250.00, comprised of 7.0 hours of search/preparation time (\$210.00) and 200 pages of photocopying (\$40.00).

In conclusion, the total fee estimate for the items under Tabs 4 and 5 is \$1,054.00, comprised of \$975.00 of search/preparation time, \$59.00 in photocopying charges and \$20.00 for computer disks.

***Tab 6 – Strategic Highways Management Office/Central Region***

The Ministry has included an affidavit from an employee who is the Issues Co-ordinator in the Central Region Strategic Highways Management Office to support its fee estimate for items 24 (public complaints from 1996 through 2001) and 26 (newspaper articles from 1995 through to

the present). This employee also co-ordinated the fee estimates for items 27 (internal correspondence regarding design modifications due to the conversion of Highway 403 east of the Highway 403-QEW interchange to the Highway 407 toll road), 28 (communication with the public, press releases or public meeting notes regarding the conversion of Highway 403 to the Highway 407 toll road), 33 (document describing changes made to Highway 407 after its opening but before the appellant's accident) and 34 (documents describing changes to signs following the appellant's accident, including dates of implementation). In addition, this employee is responsible for tracking and preparing correspondence for her office (emails, letters and phone calls) and maintaining a file of newspaper clippings on matters related to Highway 407.

With respect to item 24, the affidavit states that her office began to receive and maintain correspondence related to Highway 407 construction and operations in May 2001. The office has four binders containing the correspondence received in 2001. Each binder is approximately 3.5 inches thick and holds about 800 sheets of paper. The correspondence is filed chronologically, not by subject. This employee estimates that it will take approximately two hours to locate records responsive to this item. This employee estimates that 120 pages of responsive records will be found from which she will sever personal information from each piece of correspondence. She estimates that it will take another two hours to prepare the records for release. Therefore, the fee estimate for this item totals \$144.00, comprised of four hours of search/preparation time (\$120.00) and 120 pages of photocopying (\$24.00).

With respect to item 26, this employee indicates that she has maintained a file of newspaper clippings on matters related to Highway 407 since August 2001 and that prior to that time she believes that no such file existed. This employee states that the file contains approximately 100 pages of newspaper clippings related to various Highway 407 issues. This employee estimates that it will take one hour to look through the clippings and locate articles specifically related to the location requested by the appellant. The fee estimate for this item is \$30.00, comprised of one hour of search/preparation time.

With respect to item 27, this employee states that her office did not find any internal correspondence respecting design modifications arising from the conversion of Highway 403 to the Highway 407 toll road. However, her office did locate responsive records in Schedule 9 of the Concession and Ground Lease Agreement. The affidavit states that the search took 2.5 hours, and involved locating seven files, containing approximately 250 pages of records in total. The fee estimate for this item is \$125.00, comprised of 2.5 hours of search/preparation time (\$75.00). No indication is given regarding photocopying charges.

With respect to item 28, the affidavit states that press releases prepared prior to 2000 are stored on hard copy and can be obtained through the Ministry's Communications Branch. The affidavit indicates any responsive press releases will be requested from the Communications Branch. According to this affidavit, commencing in 2000, the Ministry has stored press releases electronically. It is believed that an announcement regarding the conversion of Highway 403 to a toll road would likely have been made before 2000. The Communications Branch will conduct a search for any pre-2000 announcements. The search is estimated to take one hour. The Office is not aware of any public meetings dealing with the conversion of Highway 403 to Highway 407. The fee estimate for this item is, therefore, \$30.00.



With respect to items 33 and 34, the Ministry employee states in her affidavit that another employee who is familiar with these issues informed her that there are five file folders that may contain information related to these items. Each file is said to contain approximately 100 pages of records. This other employee estimates that it will take approximately five hours to review the files and to extract the responsive information. The fee estimate for these items is \$150.00, comprised of five hours of search/preparation time. No indication is given regarding photocopying charges.

In conclusion, the total fee estimate for items 24, 26, 27, 28, 33 and 34 is \$429.00, comprised of \$405.00 of search/preparation time and \$24.00 for photocopying.

### **Appellant's Representations**

The appellant states:

The Ministry's submissions [...] fail to note that the majority if not all of the material requested would have already been produced to [an engineering firm] ...to conduct an independent engineering review of the interchange and to analyse its configuration, traffic patterns and driver behaviour...

### **Ministry's Reply Representations**

The Ministry offered the following comments in reply:

[...T]he appellant is mistaken in suggesting that the records provided to [the engineering firm] are coextensive with those set out in her request. Further, the appellant has not, on either occasion on which she makes the assertion that the records she is requesting are identical to those provided to [the engineering firm], provided any evidence on which to base the assertion.

. . . . .

It should be noted that the information which the Ministry provided to [the engineering firm] was targeted to the needs of the engineering review. [The engineering firm's] review was focused on current conditions and traffic operations in an area encompassing the eastbound lanes of Highway 403 from Highway 6 to the connection with the QEW, and more specifically on the eastbound Highway 403 exit to Highway 407. However, many of the items contained in the appellant's request have no geographical limitations placed on them, such as items 1 through 4, and others, such as items 24 through 29, relating to communications and correspondence, are of no interest to consultants preparing this specific engineering review.

. . . . .

There are also differences in terms of the chronological scope of the two sets of records. The [engineering firm's] review was concerned with, and based on, *current* information. By contrast, much of the information sought by the appellant is historical, extending back to 1995, 1990 and 1970 (see items 5 through 7, 11 through 14, and 35 through 37). Some of the appellant's requests are not restricted by date and would encompass any responsive record, no matter when it was produced.

. . . . .

[...]it is the Ministry's submission that the great majority of records requested by the appellant were not in fact provided to [the engineering firm]. Specifically, the Ministry submits that only items 17 through 21, 30 and parts of items 11, 12 and 31 were made available to the [engineering firm]. [...]item 12 is available from Ronen House Publishing. The remainder of the items which would have been provided to [the engineering firm] amount to approximately 100 pages of records. By contrast, the total number of records responsive to this request exceeds 1500 pages, far more than those provided to [the engineering firm].

## **Findings**

The Ministry has demonstrated through its representations and supporting affidavit evidence that it has taken the appellant's broad request seriously and relied upon appropriate expertise to determine a reasonable fee estimate for the processing of the appellant's request. I am not persuaded by the appellant's argument that a majority if not all of the information requested has already been provided to an engineering firm thus making the scope of the search much narrower or, perhaps, unnecessary. On the contrary, I am convinced that the Ministry's estimate is based on a thorough and good faith consideration of the steps reasonably necessary to respond to the request, and is in compliance with the *Act* and regulations.

## **FEE WAIVER**

### **Introduction**

Section 57(4) requires an institution to waive fees in certain circumstances.

On an appeal of a fee waiver decision, the Commissioner may either confirm or overturn the decision based on a consideration of the criteria set out in section 57(4) of the *Act*. The standard of review applicable to an institution's decision under this section is "correctness" (Order P-474).

Section 57(4) of the *Act* requires consideration of whether it would be "fair and equitable" to waive all or any part of the fee after considering the following factors:

- 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.

Previous orders have also 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.

(See Order M-408)

Where “dissemination of information for the benefit of public health and safety” may be a relevant factor, decisions have also considered:

1. Whether the subject matter of the record is a matter of public rather than private interest;
2. Whether the subject matter of the record relates directly to a public health or safety issue;
3. Whether the dissemination of the record would yield a public benefit by, a) disclosing a public health or safety concern or, b) contributing

meaningfully to the development of understanding of an important public health or safety issue;

4. The probability that the requester will disseminate the contents of the record.

(Order P-474)

### **Representations**

The appellant states that as a result of a motor vehicle accident she faces charges under the *Highway Traffic Act (HTA)* and a civil claim against her personally. She indicates that she needs the requested information

- to prepare a proper defence to the *HTA* charges
- to prepare a proper defence to a civil claim, and
- to initiate her own civil claim against the owner of the area where the accident occurred as well as those responsible for designing, constructing and maintaining this area.

The appellant states that her "... rights are severely compromised by her inability to pay for the requested information".

In support of its decision not to grant a fee waiver, the Ministry makes the following submissions:

Although not mentioned in her original request for a fee waiver, the appellant later raised the ground of financial hardship, set out in s. 57(4)(b) of the *Act*. Yet this was unsupported by any evidence of her financial situation. The Commissioner has held that a person requesting a fee waiver bears the burden of providing the institution with adequate information concerning the person's financial position, including assets, income and expenses. In Order P-880, the Inquiry Officer stated the following with respect to a claim of fee waiver:

In his representations, the appellant states the amount of his gross monthly income, his monthly expenses and the amount of disposable income. The appellant however, has not provided any information about his assets and liabilities which would give a clearer picture of his actual financial position.

Similarly, the former Assistant Commissioner noted in Order M-220 that:

As part of his submission to the Police in support of his fee waiver application, the appellant provided evidence that he has a modest

income and that his monthly expenses are also modest. The appellant did not, however, supply any evidence to the Police or the Commissioner's office, respecting his asset holdings or his net worth. Without this type of information, it is not possible to determine whether the appellant has the financial resources to pay the fee for which he is requesting a waiver.

. . . . .

The foregoing orders demonstrate that the Commissioner's approach to claims of financial hardship has been to require evidence not only of income, but also of assets and liabilities in order to evaluate the claim. This approach is premised on the user-pay principle enshrined in the *Act* and the fact that a claim for fee waiver essentially involves "shifting the financial burden from the requester to the government and ultimately the public" (Order P-526).

[T]he appellant has provided the Ministry with no evidence of hardship in support of her claim, either in her correspondence with the Ministry, or in her representations to the Commissioner. In the absence of any evidence of hardship to the appellant, it is submitted that the financial burden fulfilling the appellant's request for records should not be shifted to the Ontario public.

I agree with the Ministry's submissions. The appellant has raised the ground of financial hardship as the basis for claiming a fee waiver. However, the appellant bears the onus of providing reasonable information concerning her financial position to justify the waiving of fees. In this case, the appellant has not put forward any information regarding her assets, income and expenses. Therefore, the appellant has not provided sufficient evidence to support her claim of financial hardship. In addition, the appellant has not raised any other factors in section 57(4) to justify a fee waiver. Accordingly, I uphold the Ministry's decision not to award a fee waiver.

**ORDER:**

1. I uphold the Ministry's fee estimate of \$3,069.00.
2. I uphold the Ministry's decision to deny the appellant a fee waiver under 57(4) of the *Act*.

Original signed by: \_\_\_\_\_  
Bernard Morrow  
Adjudicator

\_\_\_\_\_ April 23, 2003