



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER PO-2513**

**Appeal PA-050113-1**

**Ministry of Health and Long-Term Care**



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## **NATURE OF THE APPEAL:**

The requester (now appellant) submitted a request to the Ministry of Health and Long-Term Care (the Ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for “statistical information on electroshock (“ECT”) in Ontario for the years 2002-2004.”

The Ministry issued a fee estimate and interim access decision based on computer programming costs and search time. In its original decision, the Ministry estimated the fee at \$5842.50 and advised the appellant that some of the records would be exempt under section 21 (invasion of privacy) of the *Act*.

The appellant appealed the decision of the Ministry to this office.

During mediation, the mediator reviewed the issues in dispute and the application of exemptions with the parties. The appellant subsequently submitted a request for a fee waiver directly to the Ministry.

In reply, the Ministry issued a revised decision letter denying the appellant’s fee waiver request, advising the appellant that he did not meet the requirements under section 57(4) of the *Act*. The Ministry, in the same decision, advised that it reduced the estimated fee from \$5842.50 to \$2,175.00, representing computer programming costs only.

The appellant was not satisfied with the revised decision. As no further issues could be resolved, the file proceeded to the adjudication stage.

The Adjudicator originally assigned to the file sought and received representations from the Ministry. These representations were subsequently sent to the appellant who was invited to submit representations on the issues, which he did.

After reviewing the representations from the appellant, the previous Adjudicator decided that they raised issues in response to the Ministry’s representations to which the Ministry should be given an opportunity to reply. The Ministry submitted representations in reply.

The file was then transferred to me for decision. The issues to be determined are the institution’s fee and denial of a fee waiver, under sections 57(1) and 57(4) of the *Act*.

## **DISCUSSION:**

### **FEE ESTIMATE**

#### **General principles**

An institution must advise the requester of the applicable fee where the fee is \$25 or less. Where the fee exceeds \$25, an institution must provide the requester with a fee estimate. Where the fee is over \$25 and under \$100, the fee estimate must be based on the actual work done by the institution to respond to the request. Where the fee is \$100 or more, the fee estimate may be based on either

- the actual work done by the institution to respond to the request, or
- a review of a representative sample of the records and/or the advice of an individual who is familiar with the type and content of the records. [MO-1699]

The purpose of a fee estimate is to give the requester sufficient information to make an informed decision on whether or not to pay the fee and pursue access [Orders P-81, MO-1367, MO-1479, MO-1614, MO-1699].

In all cases, the institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated [Order P-81, MO-1614].

This office may review an institution's fee and determine whether it complies with the fee provisions in the *Act* and Regulation 460, as set out below.

Section 57(1) 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 sections 6, 6.1, 7 and 9 of Regulation 460. Only sections 6, 7 and 9 are relevant to this discussion. They read:

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:

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.

7. (1) If a head gives a person an estimate of an amount payable under the Act and the estimate is \$100 or more, the head may require the person to pay a deposit equal to 50 per cent of the estimate before the head takes any further steps to respond to the request.

(2) A head shall refund any amount paid under Subsection (1) that is subsequently waived.

9. If a person is required to pay a fee for access to a record, the head may require the person to do so before giving the person access to the record.

In its revised decision letter, the Ministry indicated that it estimated the cost of processing the request as follows:

Computer programming costs                      36.25 hours X \$60.00 per hour = \$2,175.00

In accordance with point 5 of section 6 of Regulation 460, the Ministry is entitled to charge the appellant \$60 per hour in order to develop a computer program, if such is necessary to produce a record. However, in reviewing the Ministry's fee estimate, my responsibility under section 57(5) of the *Act* is to ensure that the amount estimated is reasonable in the circumstances. The burden of establishing reasonableness rests with the Ministry.

In explaining its fee estimate, the Ministry stated only that:

The information requested will be accessed and manipulated through the Ministry's OHIP databases in electronic form. No personal information has been requested. The fee represents the cost of analysing and manipulating data in order to develop a computer program that will retrieve the requested information from

the OHIP database. The costs for providing the information on CD and for shipping were not included in the Ministry's decision.

The fee estimate was based on a data analysis document prepared by a Ministry employee familiar with data retrieval from the OHIP database, namely the Co-ordinator Retrieval/Registry Services of the Knowledge Management and Reporting Branch. It was estimated that the development of a computer program would require 36.25 hours. Therefore, in accordance with the rate of \$15/15 minutes as set out in section 6 of regulation 460, the fee is estimated to be \$2175.00.

This estimated fee is significantly lower than the original fee estimate that was provided to the Appellant. The difference in these figures is attributable to the fact that the Ministry was able to find an alternative way to retrieve some of the data required to satisfy this request at a lower cost through the use of an existing data retrieval program. Also, Ministry staff further reviewed the initial proposed search plan, and realised and eliminated some duplicate labour from it.

Further in its representations on the issue of fee waiver, the Ministry noted that it has provided similar information to the appellant in the past, free of charge. However, it maintained that in the current request, the appellant has asked for additional information and that the data sources for the information that the appellant previously sought have changed format, which requires the Ministry to do additional matching and conversions of the data.

In seeking reply submissions from the Ministry, the previous Adjudicator asked a number of questions, one of which was how the data sources have changed in format, requiring additional matching and conversion. The Ministry responded as follows:

The identifying Fee Schedule Code that previously represented electroshock therapy has either been supplemented by two additional codes or has been replaced by one or both of these new codes. In order to ensure that the data provided in the current request is comparable to that of the previous requests, data analysis will need to be done to determine which of these codes should be used in the data selection. If we find an inconsistency in the reported results, further data manipulation will need to be carried out to identify the discrepancies.

Also, the programs prepared for the requestor's previous requests were written in a programming language that is no longer supported by our computing centre. Effectively we are starting from scratch as no previous programs can be reused.

The Ministry added that in order to process this request, a data contractor would have to be hired as the Ministry does not have available staff.

Although the Ministry has indicated that the Co-ordinator for the Retrieval/Registry Services of the Knowledge Management and Reporting Branch produced a data analysis document which contained the estimates upon which the decision was made, the Ministry did not provide that document with its representations. Indeed, the Ministry has provided no details of how these costs have been broken down, or of how the various activities have been broken down that result in the costs that have been estimated, including the number of hours that are required to perform each function in the computer programming development.

Despite the Ministry's explanation for its fee estimate, it is not at all clear to me how the Ministry has actually arrived at this sum. That is, the Ministry has not explained why it will take 36.25 hours to perform these tasks. The Ministry had provided no details of the specific steps that it must take to develop a computer program or of the time estimated to complete each step sufficient to support its estimated fee. I find, therefore, that the Ministry has not provided me with sufficient information to determine whether its fee is reasonable. Consequently, I cannot uphold the fee estimate and have no basis to substitute a different fee estimate. Therefore, I will disallow the fee estimate entirely.

Because of this finding is not necessary for me to determine whether or not the Ministry should have waived the fee, as I do not uphold the Ministry's fee estimate.

**ORDER:**

1. I do not uphold the Ministry's fee estimate.
2. I order the Ministry to provide the appellant with a final decision on access no later than **November 20, 2006**.

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Laurel Cropley  
Adjudicator

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October 19, 2006